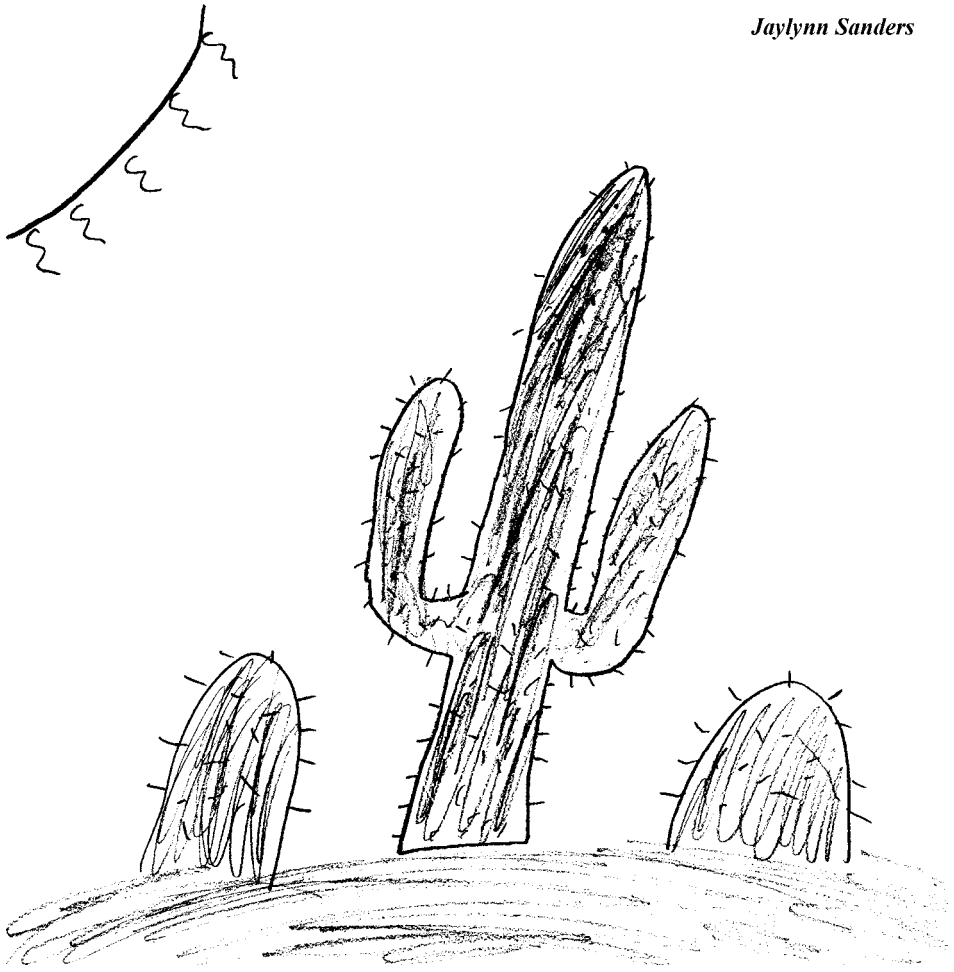
TEXAS REGISTER

Volume 36 Number 32 *August 12, 2011* *Pages 5047 – 5140*

Jaylynn Sanders



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

Texas Register, **(ISSN 0362-4781, USPS 120-090),** is published weekly (52 times per year) for $211.00 ($311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** 136 Carlin Rd., Conklin, N.Y. 13748-1531.

a section of the
Office of the Secretary of State
P.O. Box 12887
Austin, TX 78711-3824
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IN THIS ISSUE

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/open/index.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.texas.gov

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Requests for Opinions

RQ-0986-GA

Requestor:

The Honorable Glenn Hegar

Chair, Sunset Advisory Commission

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Authority of the Aransas County Navigation District to develop, maintain, and finance Rockport Beach Park (RQ-0986-GA)

Briefs requested by August 29, 2011

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201102938
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: August 2, 2011

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Opinions

Opinion No. GA-0863

Mr. David A. Reisman

Executive Director

Texas Ethics Commission

Post Office Box 12070

Austin, Texas 78711

Re: Information that must be furnished to a respondent against whom a complaint is filed with the Texas Ethics Commission (RQ-0910-GA)

S U M M A R Y

A court would likely give serious consideration to the Texas Ethics Commission's decision not to send the respondent in a matter regarding a sworn complaint, a copy of the document establishing the complainant's residency or real-property ownership in Texas.

Opinion No. GA-0864

The Honorable Glenn Hegar

Chair, Sunset Advisory Commission

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Validity and enforceability of certain types of restrictive covenants (RQ-0918-GA)

S U M M A R Y

A covenant that does not touch and concern the land will not run with the land, and foreclosure on a subsequent purchaser's land based on a lien that resulted from a personal covenant would be prohibited.

Creation of a valid contractual lien, upon which foreclosure is proper, requires evidence apparent from the language of the agreement that the parties intended to create a lien.

In order for a restrictive covenant to be enforceable, the grantee must have had notice, either actual or constructive, of the restriction when the property was purchased.

Opinion No. GA-0865

The Honorable James M. Tirey

Hale County Attorney

500 Broadway, Suite 340

Plainview, Texas 79072

Re: Deadline for initiating a salary grievance proceeding by a county or precinct officer (RQ-0922-GA)

S U M M A R Y

Attorney General Opinions GA-0051 and GA-0620 correctly construed sections 152.013 and 152.016 of the Local Government Code.

An elected county or precinct officer aggrieved by the setting of the officer's salary may request a hearing before the salary grievance committee if, among other things, the request is delivered to the grievance committee chair within five days after the day the officer receives notice of the salary.

Opinion No. GA-0866

The Honorable Nizam Peerwani

Presiding Officer

Texas Forensic Science Commission

Post Office Box 2296

Huntsville, Texas 77341-2296

Re: Investigative Authority of the Texas Forensic Science Commission (RQ-0943-GA)

S U M M A R Y

Although the Forensic Science Commission may conduct investigations of incidents that occurred before September 1, 2005, the law that created the Commission prohibits the FSC from considering evidence that was tested or offered into evidence prior to that date. The Forensic Science Commission's investigative authority is limited to those laboratories, facilities, or entities that were accredited by the Department of Public Safety at the time the forensic analyses took place. The FSC may not investigate fields of forensic analysis expressly excluded from the statutory definition of "forensic analysis." Forensic analysis that is neither expressly included nor excluded by the Act or DPS rule, but that falls under the generic definition of "forensic analysis" found in §38.35(a)(4), is generally subject to FSC investigation, assuming all other statutory requirements are satisfied.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201102933
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: August 2, 2011

♦ ♦ ♦

Opinions

Opinion No. GA-0867

Mr. Rolando B. Pablos, Chair

Texas Racing Commission

Post Office Box 12080

Austin, Texas 78711-2080

Re: Constitutionality of section 6.06(d) of article 179e of the Texas Racing Act, which imposes racetrack licensing residency requirements (RQ-0936-GA)

S U M M A R Y

The United States Supreme Court's test for determining whether a state statute violates the Commerce Clause of the United States Constitution involves mixed questions of law and fact. Because this office cannot answer questions of fact, we cannot perform the legal analysis necessary to determine how a court would resolve constitutional questions involving section 6.06(d) of the Texas Racing Act.

Opinion No. GA-0868

The Honorable Veronica Gonzales

Chair, Committee on Border and Intergovernmental Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the expanded definition of "disability" under federal law affects a taxpayer's qualification for the real property tax freeze on existing homesteads under Texas law (RQ-0939-GA)

S U M M A R Y

The tax freezes and exemptions authorized by article VIII, section 1-b of the Texas Constitution are available for residence homesteads of persons who are under a disability for purposes of payment of disability insurance benefits under Federal Old-Age, Survivors, and Disability Insurance. Whether a person falls within the definition of "disability" under the Americans with Disabilities Act is not relevant to the analysis.

Opinion No. GA-0869

The Honorable Elton R. Mathis

Waller County Criminal District Attorney

846 Sixth Street, Suite 1

Hempstead, Texas 77445

Re: Whether a county auditor is responsible for oversight of a constable's continuing education funds allocated under section 1701.157, Occupations Code (RQ-0944-GA)

S U M M A R Y

Pursuant to Local Government Code section 112.006, the county auditor has "general oversight of the books and records of a county . . . officer authorized or required by law to receive or collect money . . . that is intended for the use of the county or that belongs to the county." TEX. LOC. GOV'T CODE ANN. §112.006(a) (West 2008). Such authority includes oversight of funds allocated to a constable from the state law enforcement officer standards and education fund account ("LEOSE funds"). Accordingly, LEOSE funds must be maintained in an official county depository pursuant to chapter 116 of the Local Government Code.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201102939
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: August 2, 2011

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Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 13. FINANCIAL PLANNING

SUBCHAPTER E. TUITION REBATES FOR CERTAIN UNDERGRADUATES

19 TAC §13.82

The Texas Higher Education Coordinating Board (Coordinating Board) adopts, on an emergency basis, amendments to §13.82, concerning Tuition Rebates for Certain Undergraduates.

The amendments are being adopted, on an emergency basis, pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoptions of the rule on less than 30 days' notice. The Coordinating Board made the finding that the amendments to §13.82 should be adopted, on an emergency basis, pursuant to §2001.034 of the Government Code, because Senate Bill 176 of the 82nd Texas Legislature passed both houses with more than a two-thirds majority of all the elected members in each house and signed by the Governor, making it effective immediately. The newly amended statute will affect August 2011 graduates who are applying for the tuition rebate. The next regular quarterly meeting of the Board is scheduled for October 27, 2011, which would be too late for implementation to be in accord with the effective date of the bill. The intent of the amendment to this section is to incorporate into existing rules a provision enacted by Senate Bill 176 of the 82nd Texas Legislature that excludes course credit earned prior to high school graduation (other than credit earned exclusively by examination) from the limitation on attempted semester credit hours considered in determining a student's eligibility to receive the rebate. Further changes include adding a provision to exclude from consideration course credit that is earned to satisfy requirements for a Reserve Officers' Training Corps (ROTC) program but that is not required to complete the degree program (required by House Bill 86 of the 80th Texas Legislature) and deleting a reference to for-credit developmental courses.

The amendments are adopted, on an emergency basis, under the Texas Education Code, Chapter 54, Subchapter A, §54.0065(i), which provides the Coordinating Board with the authority to adopt rules to administer the section.

§13.82. Eligible Students.

To be eligible for a rebate under this program, a student must:

(1) - (4) (No change.)

(5) have attempted no more than three hours in excess of the minimum number of semester credit hours required to complete the degree under the catalog under which the student graduated.

(A) Hours attempted shall include:

(i) transfer credits;

(ii) course credit earned exclusively by examination (except that, for the purposes of this program, only the number of semester credit hours earned exclusively by examination in excess of nine semester credit hours is treated as hours attempted);

(iii) courses dropped after the official census date;

(iv) optional internship and cooperative education courses; and

(v) repeated courses.

(B) Hours attempted shall not include:

(i) course credit that is earned to satisfy requirements for a Reserve Officers' Training Corps (ROTC) program but that is not required to complete the degree program;

(ii) course credit, other than course credit earned exclusively by examination, that is earned before graduating from high school; and

(iii) courses dropped for reasons that are determined by the institution to be totally beyond the control of the student.

(C) For students concurrently earning a baccalaureate degree and a Texas teaching certificate, required teacher education courses shall not be counted to the extent that they are over and above the free electives allowed in the baccalaureate degree program.

~~[(5) have attempted no more than three hours in excess of the minimum number of semester credit hours required to complete the degree under the catalog under which the student graduated. Hours attempted include transfer credits, course credit earned exclusively by examination (except that, for the purposes of this program, only the number of semester credit hours earned exclusively by examination in excess of nine semester credit hours is treated as hours attempted), courses dropped after the official census date, for-credit developmental courses, optional internship and cooperative education courses, and repeated courses. Courses dropped for reasons that are determined by the institution to be totally beyond the control of the student shall not be counted. For students concurrently earning a baccalaureate degree and a Texas teaching certificate, required teacher education courses shall not be counted to the extent that they are over and above the free electives allowed in the baccalaureate degree program.]~~

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102888
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 1, 2011
Expiration date: November 28, 2011
For further information, please call: (512) 427-6114

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CHAPTER 17. RESOURCE PLANNING SUBCHAPTER B. BOARD APPROVAL

19 TAC §17.15

The Texas Higher Education Coordinating Board (Coordinating Board) adopts, on an emergency basis, new §17.15, concerning Expedited Process for Certain Projects.

The new section is being adopted, on an emergency basis, pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days' notice. The Coordinating Board made the finding that new §17.15 should be adopted on an emergency basis, pursuant to §2001.034 of the Government Code, because Senate Bill 5 of the 82nd Texas Legislature passed both houses with more than a two-thirds majority of all the elected members in each house and was signed by the Governor, making it effective immediately. The newly amended statute will affect the approval of new construction, repair, and renovation projects submitted by public institutions of higher education, projects which are submitted each month for approval by the Coordinating Board. The next regular quarterly meeting of the Board is scheduled for October 27, 2011, which would be too late for implementation to be in accord with the effective date of the bill. Therefore, this new section must be adopted on less than 30 days' notice pursuant to §2001.034 of the Government Code. Specifically, this new section will make necessary changes to existing rules in order to facilitate implementation of changes to Texas Education Code, Chapter 61, Subchapter C, §61.0573. These changes, resulting from passage of Senate Bill 5, 82nd Texas Legislature, create an expedited process for the approval of major capital projects and property acquisitions if the institution requesting approval has met specified criteria indicating highly effective facilities stewardship.

The new section is adopted, on an emergency basis, under the Texas Education Code, §61.0572(b)(6), which provides the Coordinating Board with the authority to develop and publish standards, rules, and regulations to guide institutions and agencies of higher education in making application for the approval of new construction and major repair and rehabilitation of all buildings and facilities regardless of proposed use.

§17.15. Expedited Process for Certain Projects.

(a) Board approval of a project at an institution of higher education is not required if the institution notifies the Board of the project and certifies to the Board that:

(1) the institution meets the current published Board standards applicable to the institution for space need, usage efficiency, deferred maintenance, and critical deferred maintenance or the Board has approved the institution's plan to correct any deficiencies in the institution's compliance with those applicable standards;

(2) the project meets current published Board standards applicable to the project for cost, efficiency, and space use;

(3) the project is identified on the institution's campus master plan, as submitted to the Board; and

(4) the institution has no deficiencies according to the Board's most recent facilities audit or the Board has approved the institution's plan to correct any such deficiencies.

(b) The Assistant Commissioner for Planning and Accountability shall notify the institution in writing whether the certification is sufficient and whether the information certified is consistent with the records of the Board.

(c) If the Assistant Commissioner for Planning and Accountability determines the certification is sufficient and that the information certified is consistent with the records of the Board, the project is considered approved by the Board.

(d) This section does not apply to a project that is a new branch campus, a new off-campus educational unit, or a new higher education center.

(e) The certification submitted under this section shall be promptly reviewed. An audit, pursuant to this chapter, may be conducted to ensure the sufficiency of any such certification.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102887
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 1, 2011
Expiration date: November 28, 2011
For further information, please call: (512) 427-6114

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CHAPTER 21. STUDENT SERVICES SUBCHAPTER T. THE VACCINATION AGAINST BACTERIAL MENINGITIS FOR ENTERING STUDENTS AT PUBLIC OR PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION

19 TAC §§21.610 - 21.614

The Texas Higher Education Coordinating Board (Coordinating Board) adopts, on an emergency basis, amendments to §§21.610 - 21.614, concerning the vaccination against bacterial meningitis for entering students at public or private or independent institutions of higher education.

The amendments are being adopted, on an emergency basis, pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoptions of the rule on less than 30 days' notice. The Coordinating Board made the finding that the amendments to these sections should be adopted on an emergency basis, pursuant to §2001.034 of the Government Code, because Senate Bill 1107 of the 82nd Texas Legis-

lature passed both houses with more than a two-thirds majority of all the elected members in each house and was signed by the Governor, making it effective immediately. The newly amended statute will affect entering students enrolling in public or private or independent institutions of higher education on or after January 1, 2012. The next regular quarterly meeting of the Board is scheduled for October 27, 2011, which would not allow public institutions of higher education or private or independent institutions of higher education adequate time for implementation to be in accord with the effective date of the bill. Therefore, the amendments to these sections must be adopted on less than 30 days' notice pursuant to §2001.034 of the Government Code. The intent of the amendments is to incorporate into existing rules a provision that requires entering students at public and private or independent institutions of higher education to have an initial bacterial meningitis vaccination or booster dose during the five-year period preceding or at least 10 days prior to the first day of the first semester in which the student initially enrolls at an institution. Language has been added to define "entering student." Language has also been added that requires an institution of higher education or private or independent institution of higher education to provide written notice, with the registration materials that the institution provides to a student before the student's initial enrollment, of the right of the student or parent or guardian to claim an exemption from the vaccination requirement. A provision was also made to allow a public institution of higher education or private or independent institution of higher education to extend the compliance date for an individual student to a date that is no later than the 10th day after the first day of the semester in which the student enrolls. The existing list of exemptions was expanded to include students 30 years of age or older and students enrolled only in online or other distance education courses. Language referring to the vaccine requirement for first-time students residing in on-campus dormitories or other on-campus housing facilities has been deleted.

The amendments are adopted, on an emergency basis, under the Texas Education Code, Chapter 51, §51.9192(e), which provides the Coordinating Board with the authority to adopt rules to administer the section.

§21.610. Purpose.

Pursuant to the Jamie Schanbaum and Nicolis Williams Act, this subchapter creates the procedure by which an entering [~~a first-time~~] student of an institution of higher education or private or independent institution of higher education[~~, including a transfer student, residing in on-campus housing,~~] will show evidence of being immunized against bacterial meningitis.

§21.611. Authority.

Texas Education Code, §51.9192, Subchapter Z, establishes the requirement for bacterial meningitis vaccination for certain students and identifies exceptions to that requirement. This subchapter applies only to entering [~~first-time~~] students [~~or transfer students~~] enrolling in public, [~~or~~] private or independent institutions of higher education on or after January 1, 2012 [~~2010, who plan to live in on-campus dormitories or other on-campus housing facilities~~].

§21.612. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Entering student includes:

(A) New student--A first-time student of an institution of higher education or private or independent institution of higher education, including a student who transfers to the institution from another institution; or

(B) A student who previously attended an institution of higher education or private or independent institution of higher education before January 1, 2012, and who is enrolling in the same or another institution of higher education or private or independent institution of higher education following a break in enrollment of at least one fall or spring semester.

(2) Evidence of Vaccination--Acceptable evidence of vaccination or receiving a booster dose includes:

(A) the signature or stamp of a physician or his/her designee, or public health personnel on a form which shows the month, day, and year the vaccination dose or booster was administered;

(B) an official immunization record generated from a state or local health authority; or

(C) an official record received from school officials, including a record from another state.

[~~(1) Evidence of Vaccination--Acceptable evidence of vaccination includes:~~]

[~~(A) the month, day, and year the vaccination was administered;~~]

[~~(B) the signature or stamp of the physician or his/her designee, or public health personnel;~~]

[~~(C) an official immunization record generated from a state or local health authority; or~~]

[~~(D) an official record received from school officials, including a record from another state.~~]

[~~(2) First-time student--A student who has not previously enrolled at a public, private, or independent institution of higher education, or a dual enrollment or a transfer student who was previously enrolled at a public, private, or independent institution of higher education.~~]

(3) Health practitioner--Any person authorized by law to administer a vaccination.

(4) Institution of Higher Education--Any public technical institute, public junior college, public senior college or university, medical or dental unit or other agency of higher education as defined in Texas Education Code, §61.003(8).

[~~(5) On-campus housing--Student housing facilities located on the campus of an institution of higher education, such as dormitories, sorority and fraternity houses, privately owned residence halls, and apartments.~~]

(5) [~~(6)~~] Private or independent institution of higher education--Includes only a private or independent college or university as defined in Texas Education Code §61.003(15).

§21.613. Immunization Requirement.

(a) An entering [~~A first-time~~] student who has been admitted to [~~attending~~] an institution of higher education or private or independent institution of higher education, [~~including a transfer student, who plans to reside in, or has applied for on-campus housing and has been approved to reside in an on-campus dormitory or other on-campus student housing facility~~] must show evidence of receipt of an initial bacterial meningitis vaccination dose or booster during the five-year period preceding and at least 10 days prior to the first day of the first semester in which the student initially enrolls at an institution, or following a

break in enrollment of at least one fall or spring semester at the same or another institution [~~vaccination against bacterial meningitis~~].

(b) Each institution of higher education or private or independent institution of higher education [~~that has on-campus housing for students~~] must designate a department or unit [~~an office and administrative official~~] to receive from the student evidence of receipt of an initial bacterial meningitis vaccination dose or booster during the five-year period preceding and at least 10 days prior to the first day of the first semester in which the student initially enrolls at an institution, or following a break in enrollment of at least one fall or spring semester at the same or another institution [~~having been vaccinated against bacterial meningitis~~].

(c) Evidence of the student having received the vaccination from an appropriate health practitioner must be received by the designated department or unit [~~administrative official~~] at the institution of higher education or private or independent institution of higher education. [~~The student must have received the vaccination at least 10 days prior to the student taking up residence in on-campus housing.~~] This information shall be maintained in accordance with Family Education Rights and Privacy Act Regulations, and with Health Insurance Portability and Accountability Act.

(d) Each institution of higher education or private or independent institution of higher education must provide to a student, with the registration materials that the institution provides to a student before the student's initial enrollment in the institution, the following:

(1) written or electronic notice of the right of the student or of a parent or guardian of a student, to claim an exemption from the vaccination requirement, as specified in §21.614 of this title (relating to Exceptions); and

(2) written or electronic notice of the importance of consulting a physician about the need for the immunization against bacterial meningitis to prevent the disease.

(e) Under justifiable circumstances, an administrative official of the designated department or unit of an institution of higher education, or private or independent institution of higher education, may grant extensions to individual students to extend the compliance date to no more than 10 days after the first day of the semester or other term in which the student initially enrolls.

§21.614. Exceptions.

(a) A student is not required to submit evidence of receiving the vaccination against bacterial meningitis or evidence of receiving a booster dose if the student is 30 years of age or older or if the student is enrolled only in online or other distance education courses.

(b) [~~(a)~~] A student, or a parent or guardian of a student, is not required to submit evidence of receiving the vaccination against bacterial meningitis if the student, or a parent or guardian of a student, submits to the institution:

(1) an affidavit or a certificate signed by a physician who is duly registered and licensed to practice medicine in the United States, in which it is stated that, in the physician's opinion, the vaccination required would be injurious to the health and well-being of the student; or

(2) an affidavit signed by the student stating that the student declines the vaccination for bacterial meningitis for reasons of conscience, including a religious belief. A conscientious exemption form from the Texas Department of State Health Services must be used.

(c) [~~(b)~~] The exception noted in subsection (b)(2) [~~(a)(2)~~] of this section does not apply during a disaster or public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency declared by an appropriate official or authority from the Texas Department of State Health Services and is in effect for the location of the institution the student attends.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102889
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 1, 2011
Expiration date: November 28, 2011
For further information, please call: (512) 427-6114

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER R. FORMOSAN TERMITE QUARANTINE

4 TAC §19.181

The Texas Department of Agriculture (the department) proposes an amendment to §19.181, concerning a quarantine for the Formosan subterranean termite, *Coptotermes formosanus* Shiraki. The amendment is made to add Hays County to the list of subterranean termite-infested counties in Texas. The Texas A&M University scientists recently informed the department that the subterranean termite infestation was detected in Hays County. The amended section was adopted on an emergency basis on June 27, 2011, as published in the July 15, 2011, issue of the *Texas Register* (36 TexReg 4481). The department believes that restriction on the movement of quarantined articles from the infested county would delay the spread of this termite into free areas of Texas.

The amendment to §19.181 adds Hays County to the list of the Formosan subterranean termite-infested counties in Texas. The department believes that it is necessary to take this action to reduce spread of the Formosan subterranean termite into free areas of Texas.

Dr. Shashank Nilakhe, State Entomologist, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the amended section, as proposed.

Dr. Nilakhe has also determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amended section will be reduction in the spread of this termite due to manmade activities. There will be a treatment cost to small and/or micro-businesses that move quarantined articles from the amended quarantined county to free areas. In order to comply with the amended section, businesses located in the amended county may be required to treat quarantined articles by fumigation or another means prescribed by the department. The cost of treatment will depend on the volume of quarantined articles moved from infested counties to non-infested counties and the method of treatment prescribed. Consequently, the specific cost to the impacted businesses cannot be determined at this time.

Comments on the proposal may be submitted to Dr. Shashank Nilakhe, State Entomologist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendment to §19.181 is proposed under the Texas Agriculture Code (the Code) §71.002, which provides the department with the authority to quarantine an area if it determines that a dangerous insect pest or plant disease not widely distributed in this state exists within an area of the state; the Code, §71.003, which provides the department with the authority to declare an area pest-free and quarantine surrounding areas if it determines that an insect pest or plant disease of general distribution in this state does not exist in an area; and the Code, §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for a specific treatment of quarantined articles.

The Code affected by the proposal is the Texas Agriculture Code, Chapter 71.

§19.181. Quarantined Areas.

The quarantined areas are:

(1) - (9) (No change.)

(10) Texas counties: Anderson, Angelina, Aransas, Bexar, Brazoria, Brazos, Cameron, Chambers, Collin, Comal, Colorado, Dallas, Denton, Fort Bend, Galveston, Gregg, Harris, Hays, Henderson, Hidalgo, Jefferson, Johnson, Liberty, Nacogdoches, Nueces, Orange, Polk, Rockwall, Smith, Tarrant, and Travis.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 29, 2011.

TRD-201102879
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 463-4075

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PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 33. FEES

4 TAC §33.1, §33.3

The Texas Animal Health Commission (Commission) proposes the new Chapter 33, §33.1 and §33.3, concerning Fees.

The Commission has been protecting Texas' livestock and poultry since 1893. The Commission has legislative authority to make and enforce regulations and assess fees to prevent, control, and eradicate specific infectious animal diseases or pests which endanger livestock, exotic livestock, and poultry. The Commission is also the lead agency in Texas for animal disaster issues, including disease, natural, or manmade situations.

There were several legislative bills introduced during this last legislative session which all contained specific fee authorization language for the Commission. House Bill 1992 was passed and enacted into law. The intent of this legislation is to provide the Commission with the full and necessary authority to assess any appropriate and equitable fees for the different types of services or actions provided to the various agricultural animal industries. This legislation was necessary as a result of the current Legislative Budget Board recommendation to fundamentally change the agency funding structure from primarily General Revenue sourced funding to a partial fee-for-services funding model. The change will require the Commission to generate new revenue streams through fees for up to approximately 50% of future budgets to maintain all essential services.

The Commission's activities are focused not only on protecting the animal industries of Texas from disease threats, but also supporting consumer confidence that Texas' animals and products are safe, wholesome, and disease-free. A disease-free Texas livestock population also allows for enhanced marketability and less restrictive movement requirements, from both an interstate and international perspective. The Commission's previous authority to assess fees was primarily with inspection processes. The bill does expressly grant additional rulemaking authority to the agency for assessing fees.

The intent of the foreign cattle inspection fee program is to ensure that these animals entering Texas meet Commission entry requirements and do not pose a disease risk to Texas cattle. These animals may be inspected by Commission personnel for disease risk to ensure compliance with our entry requirements and any associated record keeping requirements. As that is a service provided by the Commission and in support of the protecting the state's cattle industry, the Commission is proposing to promulgate a fee to support the services provided by the Commission.

FISCAL NOTE

The Foreign Cattle Inspection Fee stands to generate an estimated $400,000 in annual revenue at $1.00/head, based on historical annual volumes of cattle entering Texas from Mexico.

Dr. Matt Cochran, Assistant Executive Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for local government as a result of enforcing or administering the rules.

The Commission has evaluated the requirements and determined that there is not an adverse economic impact associated with levying this fee, relative to the disease mitigation and risk management provided by systematic monitoring of Mexican cattle in question. The direct impact is specified on a per head basis in the first paragraph of this section. The rules stand to provide revenue for surveillance of an at-risk animal population, and for accomplishment of the Commission's mission.

PUBLIC BENEFIT NOTE

Dr. Cochran has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be sustained disease surveillance, control, enhanced marketability, quality assurance, and the related relative freedoms of commerce both intra and interstate. Animal agriculture accounts for 64% of Texas' annual agricultural receipts, with cattle counting for 42% alone. Cash receipts for all livestock in 2009 were $10.6 billion, and the Commission is the agency responsible for state-level maintenance of livestock and poultry health. Mexican cattle fulfill a need for young cattle that will on feed, and require surveillance beyond that required of domestic cattle. A disease-free state herd composed of domestic and Mexican cattle is of benefit to the public at large.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rules will not have a deleterious impact on local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. The proposed rules are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposed new chapter may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us."

STATUTORY AUTHORITY

The new chapter is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. Under §161.060, "[t]he commission may charge a fee, as provided by commission rule, for an inspection made by the commission." During the 82nd Texas Legislative Session, House Bill 1992 was passed which provides the Commission with broader based fee assessment authority. HB 1992 amends §161.060 which will allow the Commission to set and collect a fee for most services provided, including: 1) inspecting animals or facilities; 2) obtaining samples from animals for disease diagnostic test; 3) testing animals for disease; 4) disease prevention, control/eradication and treatment efforts; 5) services related to the transport of livestock; 6) control and eradication of ticks and other pests; and 7) any other service for which the Commission may incur a cost.

The Commission is also vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of

those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061.

As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require, under §161.054, testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.048. A person is presumed to control the animal if the person is the owner or lessee of the pen, pasture, or other place in which the animal is located and has control of that place; or exercises care or control over the animal. That is under §161.002.

No other statutes, articles, or codes are affected by the proposed new chapter.

§33.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Fee--A charge for services, activity or a program provided by the Commission. The Commission's mission is to protect the health of Texas animal agriculture. Services to promote the Commission's mission are known as Commission services. All fees due the Commission shall be sent to TAHC, P.O. Box 12966, Austin, Texas 78711-2966, or paid through other means as identified by the Commission, within 30 days.

(2) Inspection--Ensuring all requirements are met related to testing, official identification, bio-security standards, recordkeeping, and other applicable regulations for all animals.

(3) Livestock market--A stockyard, sales pavilion, or sales ring where livestock, exotic livestock, or exotic fowl are assembled or concentrated at regular or irregular intervals for sale, trade, barter, or exchange and where the Commission has an inspector present.

§33.3. Inspection of Foreign Cattle Fee.

(a) All cattle originating from foreign countries may be inspected at the first point of destination or any mutually agreed upon location in Texas within 7 days of entry. The owner or caretaker will submit a fee to the Commission, within 30 days of arrival, in accordance with the schedule provided in subsection (b) of this section. An inspection can include, but is not limited to, compliance with test requirements, verification of animal identification, and evaluation of bio-security standards or other standards as prescribed by the Commission.

(b) $1.00 for every animal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2011.

TRD-201102838
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 719-0724

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.3

The Texas State Securities Board proposes an amendment to §115.3, concerning examination, to update the waiver of the reexamination requirements for a dealer or an agent whose prior Texas registration has lapsed more than two years, but who has nevertheless completed the required examinations and has been registered with the Financial Industry Regulatory Authority ("FINRA") and with another state securities regulator during the previous two years. The amendment would remove the conditions that the person may not have been unregistered for more than 60 days, and had to have been registered with the state in which the person maintains its principal place of business, during the period of the lapse from Texas registration.

The "unregistered for no more than 60-day" provision of the existing rule is inconsistent with the North American Securities Administrators Association's ("NASAA") current recognition and acceptance of the FINRA Central Registration Depository ("CRD") Continuous Registration Period, which requires a registration gap in excess of two years before it deems a person to be subject to exam deficiencies. Similarly, the CRD Continuous Registration Period does not consider whether or not the person's registration within the previous two years has been with the state in which the dealer or agent maintains its principal place of business. Rather, it waives the reexamination requirements for any person whose registration with FINRA and with any state securities regulator has not lapsed for more than two years. Since at least 2007, the staff has repeatedly recommended and the Securities Commissioner has granted reexamination waivers for persons whose Texas registration lapsed more than two years, but who had completed the required examinations and whose registration with FINRA and with any other state securities regulator had not lapsed more than two years.

Patricia Loutherback, Director, Registration Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Loutherback also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to streamline the registration process and to coordinate the Texas waiver provision with NASAA and FINRA. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register.* Comments should be sent to Kara L. Kennedy, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

The amendment is proposed under Texas Civil Statutes, Articles 581-13.D and 581-28-1. Article 13.D provides the Board with authority to waive examination requirements for any applicant or class of applicants. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, includ-

ing rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-13 and 581-19.

§115.3. Examination.

(a) - (b) (No change.)

(c) Waivers of examination requirements.

(1) (No change.)

(2) A full waiver of the examination requirements of the Texas Securities Act, §13.D, is granted by the Board to the following classes of persons:

(A) - (F) (No change.)

(G) a person who completed the required examinations and[~~, but~~] whose registration with FINRA and with another state securities regulator has not lapsed for more than two years [~~and who has been continually registered during the period of the lapse (or unregistered for no more than 60 days when transferring from one employer to another) with FINRA and the state securities regulator in the state in which the person maintains its principal place of business~~].

(3) - (4) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102880
Benette L. Zivley
Securities Commissioner
State Securities Board
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 305-8303

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CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §116.3

The Texas State Securities Board proposes an amendment to §116.3, concerning examination, to update the waiver of the re-examination requirements for an investment adviser or investment adviser representative whose prior Texas registration has lapsed more than two years, but who has nevertheless completed the required examinations and has been registered with another state securities regulator during the previous two years. The amendment would remove the conditions that the person may not have been unregistered for more than 60 days, and had to have been registered with the state in which the person maintains its principal place of business, during the period of the lapse from Texas registration.

The "unregistered for no more than 60-day" provision of the existing rule is inconsistent with the changes being proposed to §115.3 for dealers and agents. Similarly, in light of the changes being proposed to §115.3 applicable to dealers and agents, the requirement that an investment adviser or investment adviser representative has been registered with the state in which it maintains its principal place of business during the lapse from Texas registration would be replaced with a requirement that the person has been registered with any state securities regulator during the previous two years.

Patricia Loutherback, Director, Registration Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Loutherback also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to streamline the registration process and to provide consistency with a similar waiver applicable to dealers and agents. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register.* Comments should be sent to Kara L. Kennedy, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

The amendment is proposed under Texas Civil Statutes, Articles 581-13.D and 581-28-1. Article 13.D provides the Board with authority to waive examination requirements for any applicant or class of applicants. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-13 and 581-19.

§116.3. Examination.

(a) - (b) (No change.)

(c) Waivers of examination requirements.

(1) (No change.)

(2) A full waiver of the examination requirements of the Texas Securities Act, §13.D, is granted by the Board to the following classes of persons:

(A) - (G) (No change.)

(H) a person who completed the required examinations and[~~, but~~] whose registration with another state securities regulator has not lapsed for more than two years [~~and who has been continually registered during the period of the lapse (or unregistered for no more than 60 days when transferring from one employer to another) with the state securities regulator in the state in which the person maintains its principal place of business~~].

(3) - (5) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102881
Benette L. Zivley
Securities Commissioner
State Securities Board
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 305-8303

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER H. SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

10 TAC §5.801

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 5, Subchapter H, §5.801, concerning Project Access Initiative. The proposed amendments are based on feedback from the Disability Advisory Workgroup and would expand the Project Access program to reserve up to 10 percent of the vouchers for a pilot program for persons exiting state psychiatric health hospitals. This "State Hospital Pilot" program would be a partnership with the Department of State Health Services (DSHS) who would provide supportive services to ensure a successful transition into the community.

Project Access was originally a housing voucher pilot program developed by the U.S. Department of Housing and Urban Development (HUD), the U.S. Department of Health and Human Services (HHS), and the Institute on Disability at the University of New Hampshire. The goal of the pilot program was to assist low-income non-elderly persons with disabilities to transition from institutions into the community by providing access to affordable housing and necessary supportive services. The Department applied for the pilot program and received 35 Section 8 housing vouchers from HUD in 2001. After the expiration of the HUD pilot program in 2003, the Department elected to continue the program in recognition of housing need and expressed public interest and has continued to operate the program since that time with periodic increases in the number of Project Access vouchers. Currently, the Department works closely with the Texas Department of Aging and Disability Services in outreach and identification of program participants. The number of Project Access vouchers administered by the Department increased from 50 to 60 in 2010 and from 60 to 100 in January 2011. In January 2011, the Department made a change to the Project Access program that reserved 20 percent of the Project Access vouchers for persons with disabilities over the age of 62. The PHA Plan presented to the Board of Directors today proposes an increase for the 2012 Annual Public Housing Agency (PHA) Plan from 100 to 120 vouchers.

The Texas state psychiatric hospital system is nearing or already over capacity. Over 600 current patients have resided in state psychiatric facilities for a year or more. Lack of sufficient capacity of both inpatient and community-based treatment resources is a public health concern in Texas. In response to this issue, DSHS developed a Continuity of Care Task Force (See Continuity of Care Task Force Report at: http://www.dshs.state.tx.us/mhsa/continuityofcare/) to recommend a range of reforms. Among the recommendations was the development of community-based living options and supportive services such as cognitive rehabilitative services to address a participant's limitations in organizing, planning and completing activities.

The Texas Money Follows the Person Behavioral Health Pilot (MFP BH) currently provides cognitive rehabilitative and substance abuse treatment services to help people with mental illness and substance use disorders leave nursing facilities and live independently in the community. Behavioral health services are provided in close coordination with the State's STAR+PLUS Medicaid managed care system and the Department of Aging and Disability Services. Eighty-seven percent of the individuals served have successfully maintained independence in the community. Examples of increasing independence include learning to drive a car; obtaining paid employment; volunteering; obtaining a GED; attending exercise or computer classes; and working towards a college degree.

As a result of success with the complex and challenging nursing facility population, DSHS will initiate a State Facility Pilot with the same type of services as the MFP BH Pilot for up to 10 state facility residents beginning in January 2012. The State Hospital Pilot will be based in the Bexar MFP BH service area and will take advantage of the infrastructure established through the MFP BH Pilot, which has been operating in Bexar County since 2008. Project Access vouchers would be a key component of this project. Results of the State Hospital Pilot and the MFP BH Pilot, which will continue through 2016 and be independently evaluated, will be used to inform state-level change in the Texas long term care and mental health systems.

The MFP BH Pilot provides an evidence-based rehabilitative service, known as Cognitive Adaptation Training (CAT), to enable individuals to relearn daily living skills that have been lost or compromised as a result of their behavioral health condition. CAT helps people establish daily routines, organize their environment, and build social skills. The CAT therapist uses motivational techniques and simple everyday tools such as clocks, signs and calendars. People are able to attain greater independence and self-direction through CAT than with traditional long term care services, which focus on caring for the individual rather than teaching the individual to care for himself. In addition, the MFP BH Pilot includes substance abuse treatment services to address addiction issues and prevent relapse, thus averting readmission to an institution. These services are provided up to six months before discharge and for one year post-discharge. All of the State Hospital Pilot participants will be Medicaid eligible, so they will have a funding source for all of their medical services. In addition, they will be clients of the local mental health authority and eligible to receive additional mental health services through the center.

Timothy K. Irvine, Acting Director, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections as proposed.

Mr. Irvine has also determined that for each year of the first five years the amended section is in effect the public benefit anticipated as a result of enforcing the rules will be enhanced compliance with formalized policy, all contractual and statutory require-

ments. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the section as proposed. The amended section will not impact local employment.

The public comment period will be held between August 12, 2011 and September 12, 2011 to receive input on these amendments. Written comments may be submitted to Texas Department of Housing and Community Affairs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941; by email to the following address: tdhcarulecomments@tdhca.state.tx.us; or by fax to (512) 475-1672. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. SEPTEMBER 12, 2011. A final recommendation for the adoption of the proposed rule will be presented to the Board in November 2011.

The amendments are proposed pursuant to the authority of the Texas Government Code, Chapter 2306, which provides the Department the authority to adopt rules governing the administration of the Department and its programs.

The proposed amendments affect no other code, article or statute.

§5.801. Project Access Initiative.

(a) Purpose. Project Access is a program that utilizes federal Section 8 Housing Choice Vouchers administered by the Department to assist low-income persons with disabilities in transitioning from institutions into the community by providing access to affordable housing.

(b) Definitions.

(1) Section 8--The United States Department of Housing and Urban Development Section 8 Housing Choice Voucher Program administered by the Texas Department of Housing and Community Affairs (the "Department").

(2) At-Risk Applicant--Applicant that meets the criteria in subparagraphs (A) and (B) of this paragraph:

(A) current recipient of Tenant-Based Rental Assistance from the Department's HOME Investments Partnership Program; and

(B) within one-hundred-twenty (120) days prior to expiration of assistance.

(c) Regulations Governing Program. All Section 8 Program rules and regulations apply to the program.

(d) Program Design.

(1) At least 70 percent of Project Access Vouchers will be reserved for persons under the age of sixty-two (62) at the time of voucher issuance that meet the eligibility criteria of subsection (e)(1) and (2) of this section.

(2) No more than 20 [~~Twenty~~] percent of Project Access Vouchers will be reserved for persons at or over the age of sixty-two (62) at the time of voucher issuance, meeting the Project Access eligibility criteria in subsection (e)(1) and (2) of this section. [~~at or over the age of sixty-two (62) at the time of voucher issuance and eighty percent will be reserved for persons meeting the eligibility criteria under the age of sixty-two (62) at the time of voucher issuance.~~]

(3) No more than 10 percent of Project Access Vouchers will be reserved for participants of a pilot program in partnership with the Department of State Health Services (DSHS) and the Department for current residents of Texas state psychiatric hospitals that meet the criteria of subsection (e)(1) and (3) of this section at the time of voucher issuance.

(4) The total number of Project Access Vouchers [~~that correlate with the 20%/80% division~~] will be determined each year in the Departmental Annual Public Housing Agency (PHA) Plan. The number of vouchers allocated to each sub-population listed in paragraphs (1) - (3) of this subsection will be determined by the Department.

(e) Project Access Eligibility Criteria. A Project Access voucher recipient must meet all Section 8 eligibility criteria as well as meet all of the eligibility criteria in paragraph [~~paragraphs~~] (1) of this subsection and either paragraph (2) or (3) of this subsection:

(1) have a permanent disability as defined in §223 of the Social Security Code or be determined to have a physical, mental, or emotional disability that is expected to be of long-continued and indefinite duration that impedes one's ability to live independently;

(2) meet one of the criteria in subparagraphs (A) and (B) of this paragraph:

(A) be an At-Risk Applicant and a previous resident of a nursing facility, intermediate care facility, or board and care facility as defined by the U.S. Department of Housing and Urban Development (HUD); or

(B) be a current resident of a nursing facility, intermediate care facility, or board and care facility at the time of voucher issuance as defined by HUD;[~~.~~]

(3) be a participant in the DSHS pilot program for residents of Texas state psychiatric hospitals at the time of voucher issuance.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 29, 2011.

TRD-201102867
Timothy K. Irvine
Acting Director
Texas Department of Housing and Community Affairs
Proposed date of adoption: November 10, 2011
For further information, please call: (512) 475-3916

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 17. RESOURCE PLANNING
SUBCHAPTER B. BOARD APPROVAL

19 TAC §17.15

The Texas Higher Education Coordinating Board proposes new §17.15, concerning Expedited Process for Certain Projects. Specifically, this new section will make necessary changes to existing rules in order to facilitate implementation of changes to Texas Education Code, Chapter 61, Subchapter C, §61.0573. This new section, resulting from passage of Senate Bill 5, 82nd Texas Legislature, creates an expedited process for the approval of major capital projects and property acquisitions given the institution requesting approval has met specified criteria indicating highly effective facilities stewardship. The new section is also adopted, on an emergency basis, in this issue of the *Texas Register.*

Susan Brown, Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the section.

Ms. Brown has also determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of administering the section will be the more efficient and effective administration of facilities at institutions of higher education. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Gary Johnstone, Deputy Assistant Commissioner for Planning and Accountability, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; or by e-mail to gary.johnstone@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new section is proposed under the Texas Education Code, §61.0572(b)(6).

The new section affects Texas Education Code, §61.0573

§17.15. Expedited Process for Certain Projects.

(a) Board approval of a project at an institution of higher education is not required if the institution notifies the Board of the project and certifies to the Board that:

(1) the institution meets the current published Board standards applicable to the institution for space need, usage efficiency, deferred maintenance, and critical deferred maintenance or the Board has approved the institution's plan to correct any deficiencies in the institution's compliance with those applicable standards;

(2) the project meets current published Board standards applicable to the project for cost, efficiency, and space use;

(3) the project is identified on the institution's campus master plan, as submitted to the Board; and

(4) the institution has no deficiencies according to the Board's most recent facilities audit or the Board has approved the institution's plan to correct any such deficiencies.

(b) The Assistant Commissioner for Planning and Accountability shall notify the institution in writing whether the certification is sufficient and whether the information certified is consistent with the records of the Board.

(c) If the Assistant Commissioner for Planning and Accountability determines the certification is sufficient and that the information certified is consistent with the records of the Board, the project is considered approved by the Board.

(d) This section does not apply to a project that is a new branch campus, a new off-campus educational unit, or a new higher education center.

(e) The certification submitted under this section shall be promptly reviewed. An audit, pursuant to this chapter, may be conducted to ensure the sufficiency of any such certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102890
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 27, 2011
For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 113. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SOCIAL STUDIES

The State Board of Education (SBOE) proposes the repeal of §§113.1-113.7, 113.21-113.24, and 113.31-113.39 and amendments to §§113.10, 113.17, and 113.40, concerning Texas essential knowledge and skills (TEKS) for social studies. The sections establish the TEKS for social studies courses in elementary, middle school, and high school. The proposed repeals would remove TEKS adopted to be effective in 1998 for Kindergarten-Grade 8 and high school social studies courses and related implementation language. The proposed amendments would remove reference to rules that would be repealed.

In May 2010, the SBOE adopted proposed revisions to the social studies TEKS for Kindergarten-Grade 8 and for high school social studies courses with an implementation date of the 2011-2012 school year. These revisions were to supersede the original TEKS at the time of implementation; however, the original TEKS still applied for the 2010-2011 school year and needed to remain in the Texas Administrative Code for that period of time. With the implementation of the new social studies TEKS for Kindergarten-Grade 8 and for high school social studies courses in the 2011-2012 school year, the original TEKS are no longer needed and may now be repealed. Existing rules must also be amended to remove references to rules that would be repealed.

The proposed repeals and amendments would have no new procedural and reporting implications. The proposed repeals and amendments would have no new locally maintained paperwork requirements.

Anita Givens, associate commissioner for standards and programs, has determined that for the first five-year period the repeals and amendments are in effect there will be no additional costs for state or local government as a result of enforcing or administering the repeals and amendments.

Ms. Givens has determined that for each year of the first five years the repeals and amendments are in effect the public benefit anticipated as a result of enforcing the repeals and amendments would be better alignment of the TEKS and coordination of the standards with the adoption of instructional materials. There is no anticipated economic cost to persons who are required to comply with the proposed repeals and amendments.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education

Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. A request for a public hearing on the proposed repeals and amendments submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register.*

SUBCHAPTER A. ELEMENTARY

19 TAC §§113.1 - 113.7

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, and §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments.

The repeals implement the Texas Education Code, §7.102(c)(4) and §28.002.

§113.1. Implementation of Texas Essential Knowledge and Skills for Social Studies, Elementary.

§113.2. Social Studies, Kindergarten.

§113.3. Social Studies, Grade 1.

§113.4. Social Studies, Grade 2.

§113.5. Social Studies, Grade 3.

§113.6. Social Studies, Grade 4.

§113.7. Social Studies, Grade 5.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2011.

TRD-201102841
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 475-1497

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19 TAC §113.10

The amendment is proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, and §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments.

The amendment implements the Texas Education Code, §7.102(c)(4) and §28.002.

§113.10. Implementation of Texas Essential Knowledge and Skills for Social Studies, Elementary, Beginning with School Year 2011-2012.

The provisions of §§113.11-113.16 of this subchapter shall be implemented by school districts beginning with the 2011-2012 school year [~~and at that time shall supersede §§113.2-113.7 of this subchapter~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2011.

TRD-201102842
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 475-1497

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SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §113.17

The amendment is proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, and §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments.

The amendment implements the Texas Education Code, §7.102(c)(4) and §28.002.

§113.17. Implementation of Texas Essential Knowledge and Skills for Social Studies, Middle School, Beginning with School Year 2011-2012.

The provisions of §§113.18-113.20 of this subchapter shall be implemented by school districts beginning with the 2011-2012 school year [~~and at that time shall supersede §§113.22-113.24 of this subchapter~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2011.

TRD-201102843
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 475-1497

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19 TAC §§113.21 - 113.24

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, and §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills

of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments.

The repeals implement the Texas Education Code, §7.102(c)(4) and §28.002.

§113.21. Implementation of Texas Essential Knowledge and Skills for Social Studies, Middle School.
§113.22. Social Studies, Grade 6.
§113.23. Social Studies, Grade 7.
§113.24. Social Studies, Grade 8.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2011.

TRD-201102844
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 475-1497

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SUBCHAPTER C. HIGH SCHOOL

19 TAC §§113.31 - 113.39

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The repeals implement the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§113.31. Implementation of Texas Essential Knowledge and Skills for Social Studies, High School.
§113.32. United States History Studies Since Reconstruction (One Credit).
§113.33. World History Studies (One Credit).
§113.34. World Geography Studies (One Credit).
§113.35. United States Government (One-Half Credit).
§113.36. Psychology (One-Half Credit).
§113.37. Sociology (One-Half Credit).
§113.38. Special Topics in Social Studies (One-Half Credit).
§113.39. Social Studies Research Methods (One-Half Credit).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2011.

TRD-201102845
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 475-1497

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19 TAC §113.40

The amendment is proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The amendment implements the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§113.40. Implementation of Texas Essential Knowledge and Skills for Social Studies, High School, Beginning with School Year 2011-2012.

The provisions of §§113.41-113.48 of this subchapter shall be implemented by school districts beginning with the 2011-2012 school year [~~and at that time shall supersede §§113.32-113.39 of this subchapter~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2011.

TRD-201102846
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 475-1497

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CHAPTER 118. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR ECONOMICS WITH EMPHASIS ON THE FREE ENTERPRISE SYSTEM AND ITS BENEFITS

The State Board of Education (SBOE) proposes the repeal of §118.1 and §118.2 and an amendment to §118.3, concerning Texas essential knowledge and skills (TEKS) for economics. The sections establish the TEKS for the high school economics course. The proposed repeals would remove TEKS adopted to be effective in 1998 for the Economics with Emphasis on the Free Enterprise System and Its Benefits high school course and related implementation language. The proposed amendment would remove reference to rule that would be repealed.

In May 2010, the SBOE adopted proposed revisions to the TEKS for the high school economics course with an implementation date of the 2011-2012 school year. These revisions were to supersede the original TEKS at the time of implementation; however, the original TEKS still applied for the 2010-2011 school year and needed to remain in the Texas Administrative Code for that period of time. With the implementation of the new TEKS for the high school economics course in the 2011-2012 school year, the original TEKS are no longer needed and may now be repealed. Existing rule must also be amended to remove references to rule that would be repealed.

The proposed repeals and amendment would have no new procedural and reporting implications. The proposed repeals and amendment would have no new locally maintained paperwork requirements.

Anita Givens, associate commissioner for standards and programs, has determined that for the first five-year period the repeals and amendment are in effect there will be no additional costs for state or local government as a result of enforcing or administering the repeals and amendment.

Ms. Givens has determined that for each year of the first five years the repeals and amendment are in effect the public benefit anticipated as a result of enforcing the repeals and amendment would be better alignment of the TEKS and coordination of the standards with the adoption of instructional materials. There is no anticipated economic cost to persons who are required to comply with the proposed repeals and amendment.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. A request for a public hearing on the proposed repeals and amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register.*

SUBCHAPTER A. HIGH SCHOOL

19 TAC §118.1, §118.2

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The repeals implement the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§118.1. Implementation of Texas Essential Knowledge and Skills for Economics with Emphasis on the Free Enterprise System and Its Benefits, High School.

§118.2. Economics with Emphasis on the Free Enterprise System and Its Benefits, High School (One-Half Credit).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2011.

TRD-201102847
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 475-1497

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19 TAC §118.3

The amendment is proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The amendment implements the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§118.3. Implementation of Texas Essential Knowledge and Skills for Economics with Emphasis on the Free Enterprise System and Its Benefits, High School, Beginning with School Year 2011-2012.

The provisions of §118.4 of this subchapter shall be implemented by school districts beginning with the 2011-2012 school year [~~and at that time shall supersede §118.2 of this subchapter~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2011.

TRD-201102848
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER B. EXAMINATIONS

22 TAC §571.27

The Texas Board of Veterinary Medical Examiners (Board) proposes new §571.27, concerning Disability Accommodations.

Proposed §571.27 seeks to clarify and codify the Board's procedure for making modifications to examination protocols in order to accommodate an applicant's disability. The proposed rule is created in part to meet the requirement set forth in Senate Bill (SB) 867, 82nd Legislature, Regular Session, effective September 1, 2011, that all Texas licensing agencies must adopt a rule establishing the eligibility criteria a dyslexic examinee must meet for accommodation. Rather than single out individuals with dyslexia, the Board instead chose to set forth in the proposed rule its procedures for accommodating all disabled individuals. The procedures described in the proposed rule were already written policy at the Board, so the codification of these procedures into rule will not represent a change in practice at the Board.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no foreseeable implications relating to cost or revenues of state or local governments as a result of enforcing or administering the rule. Ms. Oria has also determined that the new rule will have no local employment impact.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify the Board's procedure for making modifications to examination protocols for disabled persons. Ms. Oria has determined that there will be minor economic cost to individuals required to comply with the rule, in order to provide satisfactory documentation of a disability, and no negative impact on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed new rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The new rule is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

No other statutes, articles or codes are affected by the proposal.

§571.27. Disability Accommodations.

(a) The Board will evaluate all requests for examination protocol modifications to determine whether the applicant:

(1) has a disability, as defined by the Americans with Disabilities Act of 1990 (ADA); and

(2) is qualified for protection under Title II of the ADA. Such modifications must maintain the security of the examination. Exam modifications that fundamentally alter the nature or security of the exam are not permitted. Qualified individuals with disabilities are required to request reasonable accommodations every time they apply to take an examination, by the deadline for submission of disability accommodation requests as set out in the schedule on the Board website.

(b) To request a modification of examination protocol on the basis of a disability, an applicant shall complete the ADA Accommodations Request Form available on the Board website, and submit documentation providing evidence of a substantial current limitation to physical or academic functioning. A prior history of accommodations, without demonstration of a current need, will not necessarily warrant approval of testing modifications.

(1) Documentation for all disabilities shall describe the specific diagnosed disability, the extent of the disability, the criteria for the diagnosis, the type and length of treatment and the recommended accommodation.

(2) The diagnosed disability must be specific. Terms such as "problems," "deficiencies," "weaknesses," "differences," and "learning disabilities" are not the equivalent of a specific diagnosed disability.

(3) Documentation must state the specific requested accommodation. "Extended time" or "unlimited time" is not sufficient. Documentation shall indicate why specific accommodations are needed and how the effects of the specific disability are mediated by the recommended accommodations.

(4) Documentation must state any medication that the applicant is currently taking that is directly linked to the disability and any effect that medication may have relating to the major life activity affected by the disability.

(5) Documentation can include, but is not limited to, clinical evaluations performed by a licensed or qualified professional (e.g., physician or psychologist) who has conducted an examination of the applicant and has diagnosed a physical or mental impairment. Clinical evaluations can include, but are not limited to, a letter or detailed report from an evaluating professional on the evaluating professional's official letterhead. If submitting a clinical evaluation, an applicant shall also submit the examining professional's area of specialization and professional credentials, including any relevant certification and licensure.

(6) Documentation shall not be older than three years from the date of submission.

(7) All medical records provided to the Board are confidential under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(c) The entity giving the examination (i.e., TBVME or NBVME) shall be responsible for reviewing and determining whether to grant disability accommodation requests. Once accommodations have been granted, they may not be altered during the examination unless prior approval of the Executive Director is obtained.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102882
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 305-7563

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CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER B. SUPERVISION OF PERSONNEL

22 TAC §573.17

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Board of Veterinary Medical Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Veterinary Medical Examiners (Board) proposes the repeal of §573.17, concerning equine dentistry. The repeal of this section is necessary because it is obsolete and no longer necessary, as it conflicts with the changes to the Veterinary Licensing Act made by House Bill (HB) 414, 82nd Legislature, Regular Session, effective September 1, 2011. The Board enacted §573.17 to become effective July 1, 2011, but the Board voted to propose the repeal of §573.17 on June 28, 2011, prior to §573.17 becoming effective.

Nicole Oria, Executive Director, has determined that during each year of the first five years that the proposed repeal is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the repeal of the section. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Oria also determined that for each year of the first five years the repeal of this section is in effect, the public benefit anticipated as a result of the administration and enforcement of the repealed sections will be the elimination of obsolete regulations. There is no anticipated economic cost to persons who are required to comply with the proposed repeal. There is no anticipated difference in cost of compliance between small and large businesses. In accordance with the Government Code §2006.002(c), the Board has determined that this proposed repeal will not have an adverse economic effect on small or micro business carriers because it is simply a repeal of unnecessary rules. Therefore, in accordance with the Government Code §2006.002(c), the Board is not required to prepare a regulatory flexibility analysis.

The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The repeal is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter, and §801.151(b) of the Act, which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.17. Dentistry.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102883
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 305-7563

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CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.5

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.5, concerning Subpoenas/Witness Expenses.

The amendment to §575.5 seeks to remove the $200 per day limitation on the amount the Board can pay an expert witness testifying on behalf of the Board at a contested case hearing. The current $200 per day limitation has made it difficult for the Board to hire qualified expert witnesses to testify on its behalf in cases requiring particular specialized expertise. The proposed rule will only set the fees paid to non-party witnesses who are subpoenaed at the Board's request to appear at a hearing or deposition as a witness called by the Board. The witness fees set by the proposed rule will not apply to witnesses who appear voluntarily without a subpoena, witnesses noticed for deposition by another party, or witnesses called to testify by another party. Under the proposed rule, the Board will be able to contract with expert witnesses in keeping with the official state procurement processes, and the amounts the Board is able to pay as fees to retained experts will be limited only by the Board's budgetary constraints.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no additional costs to state or local governments as a result of enforcing or administering the rule as proposed. The Board would only use state resources to fund expert witness fees, from monies already budgeted to cover enforcement litigation costs.

Ms. Oria has determined that there will be no reduction in costs for either state or local governments as a result of enforcing or administering this rule. Ms. Oria has further determined that there will be no loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be the increased efficiency and effectiveness of the Board's presentation of its case in contested enforcement hearings, allowing the Board to better enforce its rules and thereby better protect the interests of the public and the animals of Texas. Ms. Oria has determined that there will be no economic cost to individuals required to comply with the rule, but that there is a possible small positive effect on local employment as a result of the employ-

ment of expert witnesses by the Board. Ms. Oria has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

No other statutes, articles or codes are affected by the proposal.

§575.5. Subpoenas/Witness Expenses.

(a) In any proceeding involving an alleged violation of the Veterinary Licensing Act, Chapter 801, Occupations Code, including a contested case under the Administrative Procedure Act, Chapter 2001, Government Code, the Board may compel by subpoena:

(1) the attendance of witnesses for examination under oath; and

(2) the production for inspection or copying of books, accounts, records, papers, correspondence, documents, and other evidence relevant to the alleged violation.

(b) A party to a contested case hearing may request that the Board issue a subpoena or subpoena duces tecum, in accordance with §2001.089 [~~Section 2001.089~~] of the APA, as may be hereafter amended. The requesting party must show good cause, relevancy, necessity of the testimony or documents, lack of undue inconvenience, imposition or harassment of the party required to produce the testimony or documents, and must deposit sums necessary to insure payment of expenses incident to the subpoenas. The written request shall be addressed to a sheriff or constable for service in accordance with §2001.089 [~~Section 2001.089~~] of the APA.

(1) The party requesting the subpoena shall be responsible for the payment of any expense incurred in serving the subpoena, as well as reasonable and necessary expenses incurred by the witness who appears in response to the subpoena.

(2) The party requesting a subpoena duces tecum shall describe and recite with great clarity, particularity and specificity the books, records, and documents to be produced. The written request shall contain a description of the item sought, the name, address and title, if any, of the person or entity who has custody or control over the items, and the date and location at which the items are sought to be produced.

(3) If the subpoena is for the attendance of a witness, the written request shall contain the name, address, and title, if any, of the witness and the date and location at which the attendance of the witness is sought.

(c) A subpoena issued at the request of the Board's staff may be served personally by a Board employee, by certified mail, or by any other means authorized by law.

(d) The Board may delegate authority to issue subpoenas to the executive director.

(e) A witness, called at the request of the Board in a contested case, who is not a party to the proceeding and who is subpoenaed to appear at a deposition or hearing or to produce books, papers, or other objects, shall be entitled to receive a fee of $25 per day and reimbursed for travel expenses in the same manner as Board employees. [~~An expert witness called at the request of the Board shall be paid a fee of $200 per day and reimbursed for travel expenses in the same manner as Board employees.~~]

(f) The pendancy of a SOAH proceeding does not preclude the board from issuing an investigative subpoena at any time.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102884
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 305-7563

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22 TAC §575.25

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.25, concerning the Recommended Schedule of Sanctions.

The amendment to §575.25 seeks to clarify the type of violation by a licensee that results in a Class B penalty. Under the proposed rule, there are two types of violations that result in a Class B penalty: either a subsequent violation by a licensee who has already committed a prior Class C violation, or a first-time offense that is severe enough to require a greater penalty than that allowed for a Class C violation, but is not so severe as to create the imminent peril to the public required for a Class A violation. This is consistent with the Board's interpretation of the current wording of §575.25.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect there will no additional costs to state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has determined that for each year of the first five years the rule is in effect there will be minor reductions in costs for the state government, particularly the Board, as a result of no longer having to expend resources litigating or explaining the definition of a Class B violation. Ms. Oria has also determined that there will be no reductions in costs to local governments, and no loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be the clarification of the Board's penalty structure, allowing the Board to more efficiently enforce its rules and thereby better protect the interests of the public and the animals of Texas. Ms. Oria has determined that there will be no economic cost to individuals required to comply with the rule, and no impact on local employment or on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

No other statutes, articles or codes are affected by the proposal.

§575.25. Recommended Schedule of Sanctions.

(a) Class A violations. Licensees considered as presenting imminent peril to the public will be considered Class A violators. In determining whether a violation is a Class A, consideration will be given to the disposition of any previously docketed cases, and to the combination of charges which might involve Class B and/or C violations.

(1) Class A violations may include, but are not limited to:

(A) conviction of a felony, including a felony conviction under the Health and Safety Code [~~code~~], §485.032 (formerly numbered; §485.033) relating to Delivery of an Abusable Volatile Chemical to a Minor, or Chapters 481 relating to Controlled Substances, or Chapter 483 relating to Dangerous Drugs;

(B) gross malpractice with a pattern of acts indicating consistent malpractice, negligence, or incompetence in the practice of veterinary medicine;

(C) revocation of a veterinary license in another jurisdiction;

(D) mental incompetence found by a court of competent jurisdiction;

(E) chronic or habitual intoxication or chemical dependency, or addiction to drugs;

(F) issuance of a false certificate relating to the sale for human consumption of animal products;

(G) presentation of dishonest or fraudulent evidence of qualifications or a determination of fraud or deception in the process of examination, or for the purpose of securing a license;

(H) engaging in veterinary practices which are violative of the Rules of Professional Conduct; or

(I) fraudulent issuance of health certificates, vaccination certificates, test charts, or other blank forms used in the practice of veterinary medicine that relate to the presence or absence of animal disease.

(2) In assessing sanctions and/or penalties, consideration shall be given to the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the potential hazard created to the health, safety, or economic welfare of the public; the economic harm to property or the environment caused by the violation; history of previous violations; what is necessary to deter future violations; and any other matters that justice may require.

(3) Maximum penalties:

(A) revocation of the license;

(B) a penalty not exceeding $5,000 for each violation per day;

(C) continuing education in a specified field related to the practice of veterinary medicine that the board deems relevant to the violation(s). The total number of hours mandated are in addition to the number of hours required to renew the veterinary license;

(D) quarterly reporting certifying compliance with board orders; and/or

(E) Licensee sit for, and pass, the SBE.

(b) Class B violations. Involves licensees who either have violated rules and/or statutes, and committed a prior Class C violation; or have violated rules and/or statutes and have not committed a prior violation, but the nature and severity of the violation(s) necessitates a greater penalty than that available for a Class C violation, but does not rise to the level of creating an imminent peril to the public. [~~or have committed a Class C violation within the last 36-month period.~~] In determining whether a violation is a Class B, consideration will be given to the disposition of the previously docketed cases, and to the combination of charges which might invoke Class A and/or C violations.

(1) Class B violations may include, but are not limited to:

(A) engaging in dishonest or illegal practices in or connected with the practice of veterinary medicine;

(B) engaging in veterinary practices which are violative of the Rules of Professional Conduct;

(C) permitting or allowing another to use his/her license or certificate to practice veterinary medicine;

(D) committing fraud in application or reporting of any test of animal disease;

(E) paying or receiving any kickback, rebate, bonus, or other remuneration for treating an animal or for referring a client to another provider of veterinary services or goods;

(F) fraudulent issuance of health certificates, vaccination certificates, test charts, or other blank forms used in the practice of veterinary medicine that relate to the presence or absence of animal disease;

(G) performing or prescribing unnecessary or unauthorized treatment;

(H) ordering prescription drugs or controlled substances for the treatment of an animal without first establishing a valid veterinarian-patient-client relationship;

(I) failure to maintain equipment and business premises in a sanitary condition; or

(J) refusal to admit a representative of the board to inspect the client and patient records and business premises of the licensee during regular business hours.

(2) In assessing sanctions and/or penalties, consideration shall be given to: the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts; the hazard or potential hazard created to the health, safety, or economic welfare of the public; the economic harm to property or the environment caused by the violation; the history of previous violations; what is necessary to deter future violations; and any other matters that justice may require.

(3) Maximum penalties:

(A) one to 10-year license suspension with none, all, or part probated;

(B) a penalty not exceeding $5,000 for each violation per day;

(C) continuing education in a specified field related to the practice of veterinary medicine that the board deems relevant to the violation(s). The total number of hours mandated are in addition to the number of hours required to renew the veterinary license;

(D) quarterly reporting certifying compliance with board orders; and/or

(E) Licensee sit for, and pass, the SBE.

(c) Class C violations. Involve licensees who have violated the rules and/or statutes, but do not have a history of previous violations. Consideration should be given to the nature and severity of the violation(s).

(1) Class C violations may include, but are not limited to, minor violations included in Class A and/or B in which there is no hazard or potential hazard created to the health, safety, or economic welfare of the public and no economic harm to property or to the environment.

(2) In assessing sanctions, consideration should be given to the good or bad faith exhibited by the cited person; evidence that the violation was willful; extent to which the cited individual has cooperated with the investigation; and the extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused.

(3) Maximum penalties:

(A) six months to one-year suspension with the entire period probated;

(B) an administrative penalty not to exceed $500 for each violation per day; and/or

(C) Licensee sit for, and pass, the SBE.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102885
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 305-7563

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CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER B. STAFF

22 TAC §577.15

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §577.15, concerning the Fee Schedule.

The amendment to §577.15 seeks to set fees for the new equine dental provider licenses created by House Bill (HB) 414, 82nd Legislature, Regular Session, effective September 1, 2011. The amendment to §577.15 also seeks to modify the fees charged to licensed veterinarians to accommodate the budgetary appropriations set for the Board by the 82nd Legislature and the rising costs of processing veterinary licenses.

With regard to the new equine dental provider licenses, the proposed rule creates a $100 one-time examination fee, a $100 one-time application fee, and a $200 annual license renewal fee. These fees are necessary because there are many costs associated with licensing equine dental providers. Board staff will create the jurisprudence examination for equine dental provider licensees required by HB 414, and will design and implement a licensure procedure for the new equine dental provider licensees. For those prospective licensees that are currently practicing equine dentistry and will be seeking grandfathered licenses prior to September 1, 2012 under the procedures set forth by HB 414, Board staff will review extensive paperwork for each licensee, including affidavits, proof of course work at an approved equine dental school, or financial records. For those prospective licensees who seek licensure after September 1, 2012, Board staff will review paperwork verifying that the prospective licensee is certified by the International Association of Equine Dentistry or another similar approved organization. For all prospective equine dental provider licensees regardless of when they seek licensure, Board staff will review completed application forms, conduct and review criminal background checks, and administer and review the results of a jurisprudence examination. After the equine dental providers are licensed, Board staff will expend additional resources reviewing and approving continuing education hours for equine dental provider licensees, as well as enforcing the Veterinary Licensing Act and the Rules Pertaining to the Practice of Veterinary Medicine, including the standard of care for licensed equine dental providers. Board staff conducted a survey of other states that license and regulate equine dental providers, and of those that responded, the majority had license renewal fees of $200 or more. The members of the Board's Equine Dental Provider Advisory Committee have found by consensus that the proposed fees for equine dental provider licenses to be reasonable.

With regard to veterinary licenses, the proposed rule increases fees for the licensing examination by $200, increases renewal fees for all types of veterinary licenses by $10, increases by $15 fees for renewals of all types of veterinary licenses that are delinquent by 90 days or less, increases by $20 fees for renewals of active and inactive veterinary licenses that are delinquent by more than 90 days, increases by $19 the fee for renewals of special veterinary licenses that are delinquent by more than 90 days, and increases the application fee for a provisional license by $150. The provisional license fee has not increased since the provisional license was implemented in 1993.

Several factors have made these fee increases necessary. First, the budgetary appropriation from the 82nd Legislature for the Board's 2012-2013 biennium was a reduction in funding from the budget for the 2011 fiscal year, so in order to provide the same level of licensing and regulation of the profession, the Board will need to increase fees. Another significant driver for the increase in fees was a $70,000 one-time payment to settle a lawsuit against the Board brought by a former employee. Since the settlement payment is a one-time charge, the Board anticipates that the increases in renewal fees for veterinary licenses will be lessened by $5 for the 2013 fiscal year. An increase in the number of veterinary license applications, both for provisional and standard licenses, has also led to an increase in costs. The increase in provisional licenses, in particular, has increased expenses, as provisional licenses require Board staff to process both provisional and supplemental applications. Improvements in the technology used by forgers to create fake identification documents has also increased costs, as Board licensing staff must now more carefully scrutinize each applicant's identifying documents to ensure that they are not forgeries. This problem has been compounded by an increase in applications for

licensure by foreign graduates, as foreign applicants must submit additional identification documents to prove their legal immigration status in the United States. Board staff must carefully review the immigration documents to determine their authenticity. The complexity of the documentation required to determine the immigration status of foreign applicants necessitates additional time spent by licensing staff answering questions and providing assistance to foreign graduates attempting to determine what documents are needed. Further complicating this process is the fact that a new federal law, designed to reduce identity theft and passport fraud, states that birth certificates issued by Puerto Rico prior to July 1, 2010 cannot be used as identification, and so all Puerto Rican-born applicants must provide a re-issued birth certificate. Board staff conducted a survey of other states' licensing fees for veterinarians, and the proposed increases are similar in amount to fees already charged by the many other states.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be an increase in revenue to state government as a result of the fee increases, and no impact on revenue to local government. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have a small positive local employment impact as an unknown number of licensed equine dental providers attain employment in the first five years that the rule will be in effect.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be that the increase in funding through increased fees will allow the Board to continue to effectively and efficiently license veterinarians and equine dental providers, and thereby better protect the interests of the public and the animals of Texas.

Ms. Oria has determined that there will be a slight increased economic cost from the increase in fees to individuals required to comply with the rule, and a slight increased economic cost for small businesses and micro businesses, particularly those owned by veterinarians and equine dental providers. There is a possible difference in the cost of compliance between small and large businesses based purely on the number of licensees employed by the business--if a larger business employs more licensees, it will have to pay proportionately more licensing fees. The Board has approximately 6,556 active, non-delinquent doctor of veterinary medicine licensees, and it is appropriate to assume that a large majority of these licensees are likely owners of small businesses or micro-businesses. Based on testimony from public hearings the Board has held on the issue of equine dentistry, the Board believes that there are a maximum of 100 practicing equine dental providers in Texas, most if not all of which are likely to be micro-businesses.

For licensed veterinarians, the increase in renewal fees is $20 or less, and will not likely have any measurable impact on small or micro-businesses. For veterinarians seeking licensure, the $200 increase in the one-time examination fees and application processing fees should not create a significant economic impact on the small or micro-businesses seeking to hire them or the small or micro-businesses the newly licensed veterinarians start upon licensure. For equine dental providers seeking licensure, the $100 examination and application processing fees may have a slight negative economic impact on 50-100 micro-business they own, but the legal employment and advertising opportunities that come with licensure should outweigh this fee. Since the vast majority of the Board's licensees either own or are employed by small or micro-businesses, and given the legislative mandates and costs associated with licensing both veterinarians and equine dental providers as described in detail above, the Board believes that there are no acceptable alternatives to the proposed fees that could reduce the adverse impact on small or micro-businesses while still allowing the Board sufficient funding to adequately protect the health and safety of animals owned by the public in Texas.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter, and §801.151(e), which states that the Board may adopt rules necessary to implement a jurisprudence examination for licensed equine dental providers, including examination fees.

No other statutes, articles or codes are affected by the proposal.

§577.15. Fee Schedule.

The following fees are proposed by the Board:
Figure: 22 TAC §577.15

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102886
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 305-7563

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TITLE 34. PUBLIC FINANCE

PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 103. CALCULATIONS OR TYPES OF BENEFITS

34 TAC §103.4

The Texas County and District Retirement System proposes an amendment to §103.4, concerning the calculation of average compensation for purposes of determining prior service credit. The proposed amendment deletes the requirement that average prior service compensation must be calculated using only the actual compensation paid the member during the 36-month period immediately preceding the month the subdivision began participating in the System. The rule allows the subdivision to

adopt any reasonable method for calculating average prior service compensation that is fair, equitable and consistently applied, so long as the total prior service credit awarded the member under the method used by the subdivision is not less than the prior service credit the member would be awarded if actual prior service compensation were used. Limiting the calculation to that compensation only received in such 36-month period can unfairly deny any prior service credit to an otherwise eligible member whose entire prior service was performed 3 years before the subdivision joined the System. Furthermore, compensation records for the 36-month period may be missing and difficult to retrieve or reconstruct.

Tom Harrison, General Counsel, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be the simplification of reporting by the subdivisions and the equitable treatment of all eligible members. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Tom Harrison, General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, Texas 78768-2034.

The amendment is proposed under the Government Code, §843.104, which authorizes the board of trustees of the Texas County and District Retirement System to adopt rules for defining and computing average prior service compensation.

The Government Code, §843.104 is affected by this proposed amendment.

§103.4. Certification of Prior Service and Average Prior Service Compensation.

(a) The subdivision shall certify to the system the total number of months of prior service performed by the member and the average prior service compensation paid to the member. Based on this certified information, the system shall record the amount of credited service for prior service granted to the member and determine the member's maximum and allocated prior service credit.

(b) Prior service is that service performed for the subdivision prior to the subdivision's effective date of participation. One month of credited service for prior service shall be granted to the member for each calendar month during which the member performed at least one day of service for the subdivision other than as a temporary employee, prior to the month that includes the subdivision's effective participation date.

(c) Average prior service compensation is the average monthly compensation paid to the member for those full months of employment performed for the subdivision [~~during the 36 months~~] prior to the subdivision's effective date of participation. Except for a member who does not have a full month of employment with the subdivision, only full months of employment and the compensation received for such full months of employment shall be considered in the calculation of average prior service compensation. For a member who does not have a full month of employment, the subdivision shall estimate a monthly compensation for the member using the member's rate of pay.

(d) Instead [~~Subject to subsections (e) and (f) of this section, instead~~] of calculating the actual compensation paid to the member for each [~~specific~~] full month of employment [~~performed for the subdivision during the 36-month period~~], the subdivision may calculate the average monthly compensation of its member using any method adopted by the subdivision that is reasonable, fair, equitable, and consistently applied. However, in no event may a member receive less prior service credit than the member would receive if the calculation were based on the member's actual average prior service compensation. [~~the total wages paid to the member for each full calendar quarter of employment during the 12 calendar quarters immediately preceding the effective date of participation as that member's compensation was reported to the Texas Workforce Commission on the employer's quarterly report, averaged over the total number of months in the calendar quarters of the member's employment recognized for purposes of this calculation.~~]

[~~(e) For those members having less than one full calendar quarter of employment during the 36-month period, the subdivision shall use the procedure described in subsection (c) of this section.~~]

[~~(f) A subdivision whose effective date of participation is in the third month of a calendar quarter may consider the quarter which includes the effective date of participation to be the first calendar quarter prior to the subdivision's effective date of participation. A subdivision described by this paragraph may estimate the member's compensation for the last month of the quarter.~~]

(e) [~~(g)~~] If, under §843.201 of the Act, a subdivision has acquired a public facility or assumed a governmental function, the date of acquisition or assumption shall be the effective date of participation for purposes of calculating the prior service and average prior service compensation of those members eligible under that section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2011.

TRD-201102849
Tom Harrison
General Counsel
Texas County and District Retirement System
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 637-3355

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34 TAC §103.9

The Texas County and District Retirement System proposes an amendment to §103.9, concerning the administration of partial lump sum distributions on service retirements. The proposed amendment follows the expanded rollover opportunities under federal law, conforms certain definitions in the rule with certain definitions in the TCDRS Act, eliminates the rigid allocation of basis rules for distributions from multiple accounts in keeping with the greater latitude afforded members with respect to separate elections specific to each of the member's accounts, and allows the member greater flexibility for dividing benefits in the case of divorce. The eligibility and procedure for electing a partial lump sum distribution at service retirement is essentially unchanged.

Tom Harrison, General Counsel, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a

result of administering the rule will be greater flexibility for members in making their partial lump sum distributions more suitable to their individual needs. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Tom Harrison, General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, Texas 78768-2034.

The amendment is proposed under the Government Code, §845.102, which authorizes the board of trustees of the Texas County and District Retirement System to adopt rules that are necessary or desirable for efficient administration of the system.

The Government Code, §844.009 is affected by this proposed amendment.

§103.9. Partial Lump-Sum Distribution on Service Retirement.

(a) The following words and terms, when used in this section shall have the following meanings unless the context clearly indicates otherwise.

(1) Act--Subtitle F, Title 8, Government Code as amended.

(2) Subdivision--A subdivision participating in the retirement system that is subject to the provisions of §844.009 of the Act, authorizing a member to elect to receive a portion of the member's retirement benefit in the form of a single payment.

(3) Basic annuity--An annuity payable from the Current Service Annuity Reserve Fund and actuarially determined from the sum of the member's individual account balance and current service credit [~~accumulated at interest~~], as provided under the Act. A retired member receives a separate basic annuity for credited service with each subdivision.

(4) Eligible rollover distribution--The portion of the partial lump sum distribution that is eligible to be rolled over to a qualified plan in accordance with the Internal Revenue Code. [~~In general, the portion of a partial lump sum distribution that would be includible in the gross income of the member or alternate payee is an eligible rollover distribution.~~]

(5) Individual account--The account maintained by the retirement system in the name of a member reflecting monetary credit and which consists of the contributions deducted from the compensation the member received from the subdivision, the deposits the member made to the account, and interest credited to the account, as provided under the Act. A member has a separate individual account with respect to each subdivision with which the member has credited service.

(6) Member--A member of the retirement system who is eligible to apply for and receive a service retirement annuity based on service credited with a subdivision subject to §844.009 of the Act.

(7) Retirement account--The reserves on which the member's retirement benefit is determined and which consists of the sum of the member's individual account balance, current service credit [~~accumulated at interest~~], prior service credit [~~accumulated at interest~~], and multiple matching credit [~~accumulated at interest~~], as provided in the Act. A retired member has a separate retirement account with respect to each subdivision with which the member has credited service.

(8) Partial Lump Sum Distribution--The portion of the member's retirement benefit elected by the member to be paid to the member or to the alternate payee in the form of a single payment at the time of service retirement of the member. A partial lump sum distribution may not exceed 100 percent of the balances of the member's individual accounts with all subdivisions from which the member will retire.

(b) To be eligible to receive a partial lump sum distribution on service retirement, a member must file:

(1) an application for service retirement in accordance with the provisions of the Act; and

(2) an application for a partial lump sum distribution on or after the date the member files an application for service retirement and before the date the first annuity payment becomes due.

(c) An application for a partial lump sum distribution is a document subject to the certification and spousal consent requirements of §103.3 of this title (relating to Beneficiary Designations and Payment Elections Requiring Spousal Consent).

(d) A member may revoke an application for a partial lump sum distribution or reduce the amount of the partial lump sum distribution at any time before the date the first annuity payment becomes due by filing written notice of the revocation or reduction with the system. The amount of a partial lump sum distribution may not be increased except by the timely filing of a new application.

(e) The portion of the partial lump sum distribution that is subject to taxation [~~an eligible rollover distribution~~] is a non-periodic distribution for income tax withholding purposes. A member or alternate payee receiving a partial lump sum distribution may elect to have the portion of the partial lump sum distribution that is an eligible rollover distribution transferred directly to a qualified plan, in accordance with the Internal Revenue Code.

(f) A member, or an alternate payee, receiving a partial lump sum distribution under this section may make, change, modify or revoke a rollover election, provided all checks issued by the system relating to the partial lump sum distribution paid to the member, or to the alternate payee, are returned and received by the system within 30 days of the date on which the retirement system mailed the check or checks.

(g) The reserves [~~sum~~] available to provide the member's basic annuity shall be reduced by the amount of the partial lump sum distribution.

[~~(h) When a member who has retirement accounts with two or more subdivisions applies for a partial lump sum distribution, the reduction in the amounts of annuity payments the member will receive in the future as a result of electing a partial lump sum distribution shall be allocated proportionally among the several basic annuities the member will receive from such retirement accounts. The sum available to provide the basic annuity shall be reduced by the amount derived from dividing the member's individual account balance by the total of the member's combined individual account balances with all subdivisions, and multiplying that fraction by the amount of the partial lump sum distribution. A member may not designate the allocation of the partial lump sum distribution among retirement accounts.~~]

[~~(i) The member's cost basis in a retirement account will be allocated proportionally between the allocated amount of the partial lump sum distribution and the remaining reserves available to provide the member with a service retirement annuity.~~]

(h) [~~(j)~~] The amount of the partial lump sum distribution attributable [~~allocated~~] to a retirement account is considered to be an annuity payment for purposes of determining whether the amount in the member's individual account at retirement exceeds the total amount of annuity payments made from the retirement account.

(i) [~~(k)~~] No portion of the benefit awarded to an alternate payee under a qualified domestic relations order may be distributed in the

form of a partial lump sum distribution under this section, except that a member and the alternate payee may agree in writing that instead of all or a portion of the benefits awarded to the alternate payee under the qualified domestic relations order the alternate payee should receive all or a portion of the partial lump sum distribution elected by the member under this section.

(j) [~~(l)~~] [~~An alternate payee may not receive both a partial lump sum distribution under this section and a retirement annuity under a qualified domestic relations order.~~] The direct payment by the system to an alternate payee of a partial lump sum distribution elected by the member under this section and in accordance with the written agreement between the member and the alternate payee is full payment and in complete satisfaction of the portion of the alternate payee's marital property rights and interest in the member's benefit as set forth in the written agreement. The direct payment to the alternate payee of a partial lump sum distribution under this section is a non-periodic payment made directly to a former spouse for purposes of taxation, withholding requirements and rollover eligibility under the Internal Revenue Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2011.

TRD-201102850
Tom Harrison
General Counsel
Texas County and District Retirement System
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 637-3355

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CHAPTER 105. CREDITABLE SERVICE

34 TAC §105.41

The Texas County and District Retirement System proposes new §105.41, concerning the application of the Heroes Earnings Assistance and Relief Act of 2008 (HEART Act). The HEART Act mandates that the survivors of a member who dies after December 31, 2006, while performing military service under USERRA, are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service but including ancillary life benefits and survivor benefits) that would have been provided under the employer's plan had the member resumed employment and then terminated employment on account of death. Adoption of the proposed new rule allows the System to comply with federal law by recognizing qualified military service under the USERRA, as credited service for purposes of determining eligibility for the survivor's annuity, and any optional group term life insurance. In addition, the HEART Act includes a provision that allows plans to grant benefit accruals to members who become disabled while performing such qualified military service. The provision is permissive and is not adopted by the System. However, in accordance with the 26 CFR §1.401(a)(4)-11(d)(3) relating to rules imputing credited service for military service and periods of disability, the proposed new rule expands creditable service to include (for vesting purposes but not for benefit accrual purposes) qualified military service of a member who becomes disabled while performing military service under the USERRA, but does not thereafter return to employment with the employer. As proposed, the new rule treats members who die or who become disabled while performing qualified military service similarly.

Tom Harrison, General Counsel, has determined that for the first five-year period the rule is in effect there will be no material fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be the protection and preservation of benefits for members who serve the nation by performing qualified military service under the USERRA. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Tom Harrison, General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, Texas 78768-2034.

The new rule is proposed under the Government Code, §843.502 which authorizes the board of trustees of the Texas County and District Retirement System to adopt rules to cause the System to comply with the provisions of the USERRA.

The Government Code §843.502 is affected by this proposed new rule.

§105.41. Credited Service and Survivor Benefits Under the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act).

(a) In accordance with §401(a)(37) of the Internal Revenue Code (§104(a) of the HEART Act), the survivors of a member who dies after December 31, 2006, while performing qualified military service under the USERRA, are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided under the employer's plan had the member resumed employment and then terminated employment on account of death.

(b) A deceased member described above will receive credited service for the period of the deceased member's qualified military service for purposes of determining eligibility for a Survivor Annuity in accordance with §844.407 of the Act (but such period of qualified military service will not increase the deceased member's accrued benefit used to determine the amount of any survivor annuity for which the deceased member's survivors may or may not be eligible).

(c) A deceased member described above will be included in the coverage of any Member Optional Group Term Life Program elected by the employer under §842.004 of the Act, with the death benefit based on the annualized regular rate of pay or regular salary paid the member in accordance with §844.503(c) of the Act during the most recent pay period of active employment prior to the commencement of qualified military service.

(d) The System does not adopt the permissive provisions of §104(b) of the HEART Act, as added by §414(u)(9) of the Internal Revenue Code relating to benefit accruals. However, pursuant to the authority granted the Board by §845.102 of the Act, and in conformance with 26 CFR §1.401(a)(4)-11(d)(3) relating to rules for imputing military service and periods of disability as credited service, any member who, after December 31, 2006, becomes disabled (based on the criteria set forth in subparagraphs (A) and (B) of §844.303(b)(2) of the Act) while performing the member's qualified military service under the USERRA, is entitled to credited service in the retirement system for the period of qualified military service under the USERRA. However, such period of qualified military service will not increase the disabled member's accrued benefit used to determine the amount of any service, disability or survivor annuity for which the member or the member's survivors may or may not become eligible. The disabled member will

be included in the coverage of any Member Optional Group Term Life program adopted by the employer under §842.004 of the Act and not terminated and will, subject to §844.502 of the Act, be eligible to receive extended coverage during the two years following the onset of disability, provided that sufficient evidence of the member's continuous disability and its date of onset is submitted to the retirement system on application for a death benefit based on the disabled member's compensation described in subsection (c) of this section.

(e) In accordance with §414(u)(12) of the Internal Revenue Code (§105(b) of the HEART Act), and effective as of January 1, 2009, amounts received by a member as a "differential wage payment" (within the meaning of the Internal Revenue Code) for any period that such member is not performing services for the employer by reason of qualified military service will be treated as "compensation" for purposes of benefit accruals under the Act and will be treated as compensation for purposes of the Internal Revenue Code to the extent so required.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 28, 2011.

TRD-201102857
Tom Harrison
General Counsel
Texas County and District Retirement System
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 637-3355

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CHAPTER 107. MISCELLANEOUS RULES

34 TAC §107.8

The Texas County and District Retirement System proposes an amendment to §107.8, concerning the electronic transfer of payments to the System by participating subdivisions. The proposed amendment expands the number of permissible alternatives that subdivisions may use to electronically transfer payments to the System. The System can now accommodate transfers by ACH credit and by wire. Previously, the System had required that electronic transfers be made only by ACH Debit because of concerns involving FDIC insurance coverage and collateralization. These concerns have been resolved. Subdivisions may now make payments to the System by ACH Debit, ACH Credit, wire, or check.

Tom Harrison, General Counsel, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be greater flexibility for subdivisions to choose a payment method more compatible with their internal money management practices. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Tom Harrison, General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, Texas 78768-2034.

The amendment is proposed under the Government Code, §845.102, which authorizes the board of trustees of the Texas County and District Retirement System to adopt rules that are necessary or desirable for efficient administration of the system.

The Government Code, §845.116 is affected by this proposed amendment.

§107.8. Electronic Transfer of Funds.

(a) In this section:

(1) The term "ACH" (Automated Clearing House) means the legal framework of rules and operational procedures adopted by financial institutions for the electronic transfer of funds.

(2) The term "ACH Credit" means an ACH transaction initiated by a subdivision for the electronic transfer of funds from the account of a subdivision to the account of the retirement system.

(3) The term "ACH Debit" means an ACH transaction initiated by the retirement system for the electronic transfer of funds from the account of a subdivision to the account of the retirement system.

(4) The term "electronic transfer of funds" means the transfer of funds, other than by check, draft or similar paper instrument, that is initiated electronically to order, instruct, or authorize a financial institution to debit or to credit an account.

(5) The term "pre-authorized direct debit" means the method available to a subdivision for electronically paying required contributions by granting a continuing authorization to the retirement system to initiate an ACH Debit each month for the electronic transfer of funds from the designated bank account of the subdivision to the account of the retirement system in an amount equal to the contributions required to be paid based on the monthly report as filed.

(6) The term "wire transfer" generally means a single transaction, initiated by a subdivision, in which funds are electronically transferred to the account of the retirement system using the Federal Reserve Banking System rather than the ACH.

(b) Monthly amounts required to be contributed to the retirement system in accordance with Chapter 845 of the Texas Government Code may be made by pre-authorized direct debits (ACH Debits), ACH Credits, wire transfers, or checks. [~~ACH Credits and wire transfers may not be used to transfer funds to the retirement system.~~]

(c) A subdivision may elect to use the pre-authorized direct debit method of payment by filing a signed authorization agreement with the retirement system in which the subdivision has designated a single bank account from which all transfers will be made.

(d) The authorization agreement entered into for this purpose constitutes continuing authority for the retirement system to initiate a direct debit of the subdivision's designated bank account each month and shall be effective with respect to each monthly report of the subdivision, whether filed by mail or by electronic transmission in accordance with §107.9 of this title (relating to Electronic Filing of Documents).

(e) An authorization agreement shall remain in effect until the retirement system receives either a written revocation of the agreement, or a subsequent written agreement, which automatically revokes the existing authorization. A new authorization agreement must be filed if there is any change in the designated bank account. The retirement system, in its sole discretion, may terminate the authorization agreement by mailing written notice to the subdivision. Thereafter, the subdivision must remit all contributions by check, ACH Credit, or wire transfer.

(f) Following receipt of a monthly report filed under an unrevoked authorization agreement, the retirement system will initiate an ACH Debit in the amount required to be contributed for that month

based on the report; however the actual transfer of funds from the subdivision's designated account will not occur prior to the due date of the report.

(g) The receipt of a monthly report filed under an unrevoked authorization agreement shall be considered to be receipt by the retirement system of the amount required to be contributed for the month based on that report provided that there are sufficient funds available for transfer from the subdivision's designated account on the later of the due date of the report or the date the report is received. An ACH Debit that is reversed by a subdivision or that fails because sufficient funds are not available for transfer constitutes non-payment of the required contributions with respect to that monthly report and, thereafter, such required contributions will not be considered to have been received until the day the funds are actually transferred to the account of the retirement system. A subdivision failing to timely file the required information or remit the required contributions by the due date of the report is subject to a penalty for late reporting in accordance with §107.6 of this title (relating to Penalty for Late Reporting; Waiver of Penalty).

(h) Except as provided in subsection (g) of this section, amounts sent to the system by electronic transfer of funds are received on the date the funds are credited to the system's account.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2011.

TRD-201102851
Tom Harrison
General Counsel
Texas County and District Retirement System
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 637-3355

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 3. TEXAS HIGHWAY PATROL

SUBCHAPTER B. ENFORCEMENT ACTION

37 TAC §3.22

The Texas Department of Public Safety (the department) proposes amendments to §3.22, concerning Written Warning. Amendments to §3.22 are necessary to update the rule so that it reflects the department's revised enforcement policy. The revision updates certain terminology and allows written warnings to be issued for occupant restraint violations. Written warnings may be appropriate in those instances when two individuals may be charged for a single violation or when multiple violations occur in a single traffic stop and issuing multiple citations to a single family could create an economic hardship rather than achieve voluntary compliance with the Transportation Code.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to ensure to the public greater compliance by drivers and passengers with all of the statutes and regulations pertaining to the safe operation of vehicles in this state.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Written comments on this proposal may be submitted to Major Ron Joy, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2115 within thirty (30) days of publication of this proposal in the *Texas Register.*

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

Texas Government Code, §411.004(3) is affected by this proposal.

§3.22. Written Warning.

(a) General. The department believes that warnings given for traffic law violations constitute acceptable enforcement action when given under proper circumstances. Warnings will be given for traffic law violations of a relatively minor degree.

(b) Use of written warning.

(1) Persons stopped by department of public safety traffic law enforcement officers for traffic law violations of a relatively minor degree or less than clear-cut and substantial and who are not arrested or issued a citation will be issued a written notice of warning.

(2) Written warnings will not be issued under any circumstances for:

(A) driving while intoxicated;

(B) public intoxication [~~intoxicaton~~];

[~~(C) occupant restraint violations;~~]

(C) [~~(D)~~] no drivers license (when not licensed);

(D) [~~(E)~~] any nontraffic offense; and

(E) [~~(F)~~] any violation which contributes to a traffic crash.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102892
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 424-5848

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT
SUBCHAPTER D. PROCEDURE FOR ADOPTION OF RULES

43 TAC §1.12

The Texas Department of Transportation (department) proposes new §1.12, concerning negotiated rulemaking.

EXPLANATION OF PROPOSED NEW SECTION

S.B. No. 1420, 82nd Legislature, Regular Session, 2011, the department's sunset bill, added Transportation Code, §201.118, which in part contains the Sunset Commission's across-the-board provision that requires the Texas Transportation Commission (commission) to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Government Code, Chapter 2008.

New §1.12 adds provisions related to negotiated rulemaking. The new section provides a statement of the commission's policy of encouraging the use of negotiated rulemaking when that approach is appropriate. The commission appoints the general counsel as the negotiated rulemaking coordinator. The coordinator begins the negotiated rulemaking process on his or her own initiative or at the request of the commission or the department's executive director and is responsible for determining if the process is feasible and appropriate for a specified subject. If the negotiated rulemaking process is used, the coordinator is required to ensure compliance with the Negotiated Rulemaking Act (Government Code, Chapter 2008). The commission authorizes the general counsel to delegate the duties and functions of the coordinator to another person.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the new section as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new section.

Bob Jackson, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new section.

PUBLIC BENEFIT AND COST

Mr. Jackson has also determined that for each year of the first five years in which the section is in effect, the public benefit anticipated as a result of enforcing or administering the new section will be compliance with newly enacted legislation. There are no anticipated economic costs for persons required to comply with the section as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed new §1.12 may be submitted to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on September 12, 2011.

STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.118, which requires the commission to develop and implement a policy to encourage the use of negotiated rulemaking procedures.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.118.

§1.12. Negotiated Rulemaking.

(a) The Texas Transportation Commission (commission) encourages the use of negotiated rulemaking for the adoption of commission rules in appropriate situations.

(b) The general counsel of the Texas Department of Transportation is the commission's negotiated rulemaking coordinator. The general counsel may designate a person to perform the duties and functions of the coordinator.

(c) The negotiated rulemaking coordinator, on the coordinator's own determination or on the request of the commission or the executive director, will begin the negotiated rulemaking process on a specified subject.

(d) The negotiated rulemaking coordinator will follow the procedures provided in the Negotiated Rulemaking Act (Government Code, Chapter 2008) to determine whether the negotiated rulemaking process is a feasible method to develop a particular rule. If the coordinator determines that the negotiated rulemaking process is feasible and appropriate, the coordinator will ensure compliance with the Negotiated Rulemaking Act in developing the rule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 29, 2011.

TRD-201102859
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 463-8683

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CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER B. HIGHWAY IMPROVEMENT CONTRACTS

43 TAC §9.13

The Texas Department of Transportation (department) proposes amendments to §9.13, concerning Notice of Letting and Issuance of Bid Forms.

EXPLANATION OF PROPOSED AMENDMENTS

Senate Bill 1420, relating to the continuation and functions of the department, enacted by the 82nd Legislature, Regular Session, 2011, re-titled and amended Transportation Code, §223.002, Notice by Publication. The amendments to the section removed the specific requirement for the department to use newspapers to advertise projects on which the department is seeking bids. Transportation Code, §223.002 was re-titled "Notice of Bids." The amended section also creates a requirement for the Texas Transportation Commission (commission) by rule to determine the most effective method for providing notice of bids.

Current §9.13(c), Advertising, references Transportation Code, §223.002 rather than duplicating the requirements of that section. To comply with the changes made to Transportation Code, §223.002 by the 82nd Legislature, it is necessary to amend §9.13(c).

Amendments to §9.13(c) re-title the subsection as "Notice of Bids" to provide consistency with the amended section heading of Transportation Code, §223.002.

Additionally, amendments to §9.13(c) require the department to advertise highway improvement contracts on the Electronic State Business Daily. The Electronic State Business Daily (business daily) is published each day on the Internet by the Comptroller of Public Accounts. Most state agencies are required under Government Code, §2155.083, to post a procurement that will exceed a value of $25,000 on the business daily. The business daily was created to provide one-stop access to all state procurement opportunities over $25,000 and to increase opportunities to compete for State of Texas business. The commission has determined that publishing notice of contracts on the business daily is the most effective method of providing the notice required under Transportation Code, §223.002 because the publication is widely known to contractors, used by virtually all state agencies, and easily accessed by potential bidders.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be a fiscal impact to state government. There will be a net savings to state government of $1,713,860.00 per year because the Electronic State Business Daily publishes notices free of charge and the department will no longer purchase newspaper advertisements. The proposed amendments present no fiscal implications for local governments.

Russell Lenz, P.E., Director, Construction Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Lenz has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be enhanced competition due to easier access to and greater statewide availability of bid notices. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §9.13 may be submitted to Russell Lenz, P.E., Director, Construction Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on September 12, 2011.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.002, which requires the commission to adopt rules for providing notice of highway improvement contracts.

CROSS REFERENCE TO STATUTE

Transportation Code, §223.002.

§9.13. Notice of Letting and Issuance of Bid Forms.

(a) Notice to bidders. A person may apply to have his or her name placed on a mailing list to receive the Notice to Contractors for a fee of $65 per year to cover costs of mailing the notices.

(b) Fee exemption. The following entities are not required to pay the notice subscription fee:

(1) qualified bidders approved under §9.12 of this subchapter (relating to Qualification of Bidders);

(2) other state agencies;

(3) other state departments of transportation;

(4) disadvantaged business enterprises and historically underutilized businesses;

(5) offices of the federal government; and

(6) organizations performing work under supportive service contracts awarded by the commission.

(c) Notice of Bids. The department will advertise contracts on the Electronic State Business Daily maintained and operated by the Comptroller of Public Accounts. [~~Advertising. Contracts will be advertised in accordance with Transportation Code, §223.002, Government Code, §2155.083(h)(1), and Title 23, Code of Federal Regulations, §635.112(b).~~]

(d) Bid form.

(1) Bid form content. A bid form may include:

(A) the location and description of the proposed work;

(B) an approximate estimate of the various quantities and kinds of work to be performed or materials to be furnished;

(C) a schedule of items for which unit prices are requested;

(D) the time within which the work is to be completed; and

(E) the special provisions and special specifications.

(2) Form of request. A request for a bid form on a highway improvement contract may be made orally or in writing.

(e) Issuance of bid form.

(1) Construction and maintenance contracts.

(A) Issuance. Except where prohibited under subparagraph (B) of this paragraph, the department will, upon receipt of a request, issue a bid form for a construction or maintenance contract as follows:

(i) for a project on which audited financial prequalification is not waived, only to a prequalified bidder, and only if the estimated cost of the project is within that bidder's available bidding capacity; and

(ii) for a project on which audited financial qualification is waived under §9.12(c) of this subchapter, only if the estimated cost of the project is within that bidder's available bidding capacity.

(B) Non-issuance. Except as provided in subparagraph (C) of this paragraph, the department will not issue a bid form requested by a bidder for a construction or maintenance contract if at the time of the request the bidder:

(i) is disqualified by an agency of the federal government as a participant in programs and activities involving federal assistance and benefits, and the contract is for a federal-aid project;

(ii) is suspended or debarred by order of the commission;

(iii) is prohibited from rebidding a specific project because of default of the first awarded contract;

(iv) has not fulfilled the requirements for qualification under §9.12 of this subchapter;

(v) is prohibited from rebidding that project as a result of having previously submitted a mathematically and materially unbalanced bid resulting in the rejection of the bid by the commission; or

(vi) is prohibited from rebidding that project as a result of having submitted a bid containing an error resulting in the rejection of bids by the commission.

(C) Exception. The department may issue a bid form under a temporary approval to a bidder who would be ineligible under subparagraph (B)(iv) of this paragraph if the bidder has substantially complied with the requirements of §9.12 of this subchapter.

(2) Building contracts.

(A) Issuance. Except as provided in subparagraph (B) of this paragraph, the department will issue, upon request, a bid form to a bidder having complied with §9.12(e) of this subchapter.

(B) Non-issuance. The department will not issue a bid form requested by a bidder for a building contract if, at the time of the request, the bidder:

(i) is disqualified by an agency of the federal government as a participant in programs and activities involving federal assistance and benefits and the contract is a federal-aid project;

(ii) is suspended or debarred by order of the commission; or

(iii) is prohibited from bidding that project because of default of the first awarded contract.

(3) All contracts. The department will not issue a bid form for a highway improvement contract to a bidder if the bidder or a subsidiary or affiliate of the bidder has received compensation from the department to participate in the preparation of the plans or specifications on which the bid or contract is based.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 29, 2011.

TRD-201102860
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 463-8683

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43 TAC §9.21

The Texas Department of Transportation (department) proposes amendments to §9.21, concerning Purchase of Service.

EXPLANATION OF PROPOSED AMENDMENTS

House Bill 3730, 82nd Legislature, Regular Session, 2011, amended Transportation Code, §223.042 by allowing the department to award a contract as a purchase of service under Subtitle D, Title 10, Government Code, if the department estimates that the contract will involve an amount for which formal bids for the purchase of services are not required and determines that the competitive bidding procedure is not practical.

Amendments to §9.21 change the dollar limit for informal purchases for maintenance contracts awarded as a purchase of service from amounts estimated as less than $15,000 to the amount of the Comptroller of Public Account's delegated purchase limits for informal bidding (currently $25,000). These changes allow the department to provide a more expedient means to acquire services for highway and building maintenance.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Scott Burford, Director, General Services Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Burford has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be a savings in processing time to the department, resulting in greater efficiencies in service to the public. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §9.21 may be submitted to Scott Burford, Director, General Services Divi-

sion, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on September 12, 2011.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.042, which requires the department to adopt rules regarding the privatization of maintenance contracts.

CROSS REFERENCE TO STATUTE

Transportation Code, §223.042.

§9.21. Purchase of Service.

The department may award a maintenance contract under this section [~~estimated at less than $15,000~~] as a purchase of service under the State Purchasing and General Services Act, Government Code, Title 10, Subtitle D, if the department [~~instead of using the letting procedures described in this subchapter when the department determines that~~]:

(1) estimates the contract will involve an amount for which formal bids for the purchase of service are not required under rules adopted by the Texas Comptroller of Public Accounts under Government Code, Chapter 2155, Subchapter C; and [~~the project does not require detailed specifications;~~]

(2) determines that it would be impractical to use the letting procedures described in this subchapter. [~~there is a need to expedite the project; or~~]

[~~(3) it would be otherwise impractical to use the letting procedures.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 29, 2011.

TRD-201102861
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 463-8683

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CHAPTER 21. RIGHT OF WAY
SUBCHAPTER C. UTILITY ACCOMMODATION

43 TAC §21.38

The Texas Department of Transportation (department) proposes amendments to §21.38, Construction and Maintenance, concerning Utility Accommodation.

EXPLANATION OF PROPOSED AMENDMENTS

Current provisions in §21.37, Design, and §21.38, Construction and Maintenance, provide that a utility company is responsible for the installation, adjustment or relocation, maintenance, and repair of its utility facilities placed in state highway right of way. These provisions have been read by some individuals as a prohibition against the department including in its highway construction contract the work related to adjusting or relocating a utility facility as required by a highway improvement project. That was not the intent of the rules and the department historically permitted the inclusion of utility work in construction contracts in order to avoid delays on some highway construction projects. Amendments to §21.38 clarify the utility company's ultimate responsibility for the construction and maintenance of its utility facilities, but expressly authorize the department and utility company to agree to have the department include required adjustment or relocation work in the department's highway construction contract. The amendments also provide the procedure to be followed for such an agreement. The procedure allows the department's contractor to do the adjustment or relocation utility work and provides for payment by the utility company of its prorata share of that cost. The amendments provide for a streamlined, efficient process that allows for the potential of expedited work and reduced costs, especially when small adjustments or relocations are combined into the larger construction contract. In addition, the new procedure may reduce the burden on small utility companies by reducing a company's use of in-house resources or the necessity of procuring independent outside contractors.

Amendments to §21.38(a) add a new paragraph (1) to expressly describe the utility company's responsibility for the construction and maintenance of its utility facility including the initial installation, adjustment or relocation caused by a highway improvement project, and any replacement, expansion, or repair that the utility determines is needed. This responsibility has always been implicit in the language of §21.38, but the additional language makes it clear. Likewise, new paragraph (1) expressly clarifies that the construction and maintenance work by the utility company must conform to its design plans prepared and approved under §21.37, and that the construction and maintenance work must be accomplished in a manner and to a standard acceptable to the department. These provisions describe in express language the responsibilities and standards that have historically been applied to utility facility construction and maintenance under §21.38.

Amendments to §21.38(a) renumber the existing paragraphs and changes to paragraphs (3), (4), and (6) add or modify words to clarify the current meaning of those provisions. These are grammatical rather than substantive changes.

Amendments to §21.38(b)(1) delete a requirement that the utility company return the right of way to its original condition after a utility installation is complete. The provision is replaced with a new standard that requires the utility company to restore the right of way to substantially the same condition as existed before the construction or maintenance. Since the phrase "original condition" is susceptible to multiple interpretations, the new restoration standard adds clarity and protects the utility company from an uncertain and potentially onerous burden.

Amendments to §21.38(b)(2), (3), and (6) and (c)(3) add or modify words to clarify the current meaning of those provisions. These are grammatical rather than substantive changes.

Amendments to §21.38(d)(2) delete the word "installed" and replace it with the words "constructed or maintained." This change makes the provision consistent with the various types of utility construction work that can occur, whether initial installation, adjustment or relocation caused by a highway improvement project, or any replacement, expansion, or repair that the utility determines is needed. The amendments also add the words "or in the manner" to expressly clarify that the utility facility must be in conformity with the approved plans both as to the location as

well as materials and other design requirements of Subchapter C.

The amendments add new §21.38(e) to expressly authorize the department and utility company to agree that the department include required utility work in the department's highway construction contract. Paragraph (1) limits this authority to circumstances in which the utility facility needs to be adjusted or relocated due to a highway improvement project. It does not apply to initial installation or any replacement, expansion, or repair that the utility determines is needed. Both the utility company and the department must voluntarily agree. The department may approve the agreement only if the district engineer determines that including the adjustment or relocation of the utility facility in the highway construction contract is necessary to meet the construction sequencing of the state highway improvement project or will expedite completion of the project, the department's contractor is capable of having the utility work performed in conformity with all applicable local, state, and federal regulations for the installation of the particular utility facility, and the adjustment or relocation does not involve an unreasonably high risk of danger to the traveling public, highway, or construction workers due to the presence of hazardous material, high pressure gas, or other potentially dangerous utility products. The adjustment or relocation must also not involve an unreasonably high risk of prolonged interruption of delivery of a utility product that is essential to public health and safety. It is critical to both the utility company and department that only experienced well-trained persons engage in the construction of complicated or high risk utility facilities.

Section 21.38(e)(2) requires the utility to approve the plans, specifications, and cost estimate prior to the adjustment or relocation being included in the construction contract. This provision allows the utility company oversight authority in order to ensure that the plans satisfy its needs and comply with all regulatory requirements. The new paragraph also confirms that the utility company is ultimately responsible for the design and construction plans. It cannot pass responsibility for compliance with applicable regulatory and environmental requirements to the department.

Section 21.38(e)(3) requires the utility company to pay its prorata share of the cost of construction work related to the adjustment or relocation of its utility facility. This paragraph incorporates the cost sharing/reimbursement provisions of Transportation Code, §203.092. If the department is otherwise responsible under Transportation Code, §203.092 for the utility company's cost in a standard situation when the utility company does the actual construction work, the same cost responsibility will apply when the work is done by the department's contractor under subsection (e).

Section 21.38(e)(4) specifies certain provisions that must be included in the agreement between the department and the utility company. The agreement must provide for the estimated cost of construction work related to the adjustment or relocation of the utility facility including the cost of any betterments, the utility company's prorata share of the cost based on statutory eligibility for department cost participation, payment to the department of the utility company's share of costs at least 45 days prior to opening the highway construction bids, and a description of any construction work that the utility company will perform. These requirements allow both parties to be aware of and agree to work and cost responsibilities before the project begins. Advance payment by the utility company prevents the State from being contractually obligated to pay its highway contractor for the utility work without a reliable method to later collect the amounts due from the utility company.

Section 21.38(e)(4) also specifies other provisions that must be included in the agreement between the department and the utility company. The agreement must provide for concurrent construction inspection and final acceptance by the utility company when the project is complete. These provisions ensure that the utility company has the opportunity to inspect during construction to determine contractor compliance and that the utility company takes full responsibility of the completed facility at the conclusion of the work. The agreement must also provide that the utility company physically connect the installed facility to its existing facilities to make the installed facility operational, and perform all applicable testing. It is critical that the department not assume responsibility for either the risk inherent in dealing with potentially dangerous utility products or any disruption of utility service.

Section 21.38(e)(5) defines the word "betterment" for purposes of this subsection to mean an upgrading of the utility facility being adjusted that is not attributable to the highway construction and is made solely for the benefit of the utility. It is based on the federal definition found in 23 C.F.R. §645.105.

Section 21.38(e)(6) clarifies that responsibility for continued utility service remains with the utility company both during the design and construction of an adjustment or relocation as well as after final completion of construction, and that the department is not responsible for providing services to the end users of the utility company during those phases of the construction project.

Section 21.38(e)(7) provides that the utility is responsible for any ongoing maintenance after completion of the construction work. The department's involvement in the construction of the utility adjustment or relocation does not include any future maintenance responsibilities.

Section 21.38(e)(8) provides the circumstances under which the department will reimburse the utility company for eligible expenses the company incurs in approving and inspecting the construction work. This reimbursement obligation is only applicable to the extent the adjustment or relocation is otherwise reimbursable under Transportation Code, §203.092.

Section 21.38(e)(9) provides that all other provisions of 43 TAC Chapter 21, Subchapter B that apply to estimates and state reimbursement, and Subchapter C that apply to design and construction, continue to apply to adjustments or relocations when the department is doing the construction work under subsection (e). This language is included to clarify that the same standards and requirements apply to an adjustment or relocation of a utility facility regardless of which entity is responsible for the actual construction.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

John Campbell, Director, Right of Way Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Campbell has also determined that for each year of the first five years in which the amendments are in effect, the public

benefit anticipated as a result of enforcing or administering the amendments will be the expedited delivery of state highway improvement projects and the potential for reduced costs. There are no anticipated economic costs for persons required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §21.38 may be submitted to John Campbell, Director, Right of Way Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on September 12, 2011.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §203.095, which provides the commission with authority to adopt rules to implement Transportation Code, Chapter 203, Subchapter E, governing the relocation of utility facilities.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 203, Subchapters A and E.

§21.38. Construction and Maintenance.

(a) General.

(1) A utility is responsible for the construction and maintenance of its utility facility, including installation, adjustment or relocation, replacement, expansion, and repair. Construction and maintenance must conform to the requirements of §21.37 of this subchapter (relating to Design) and shall be accomplished in a manner and to a standard acceptable to the department.

(2) [~~(1)~~] The provisions of this section apply to all utility types, unless otherwise specified in §21.40 and §21.41 of this subchapter (relating to Underground Utilities and Overhead Electric and Communication Lines, respectively).

(3) [~~(2)~~] Utilities with facilities on the right of way shall be responsible and accountable to preserve [~~maintain~~] and protect the safety of the traveling public and the public's investment in the highway facility.

(4) [~~(3)~~] When an existing approved utility facility requires construction or maintenance, the utility shall notify the district 48 hours before the start of any work. In an emergency situation, the utility shall notify the district as soon as possible.

(5) [~~(4)~~] The utility shall not cut into the pavement or concrete riprap without written permission from the department.

(6) [~~(5)~~] Utilities shall reimburse the department for the cost of measures taken by the department in the interest of public safety, restoration, clean-up, and repairs to the highway and right of way made necessary by the utility's failure to comply with the provisions of this subchapter.

(b) Vegetation and site clean-up.

(1) When utility construction or maintenance [~~installation~~] is complete, the utility shall restore [~~return~~] the right of way to substantially the same condition that existed before the construction or maintenance [~~a condition at a minimum, equal to its original condition~~], including reseeding or resodding to prevent erosion. After the area is brought to grade, the entire disturbed area shall be covered in accordance with the department's Standard Specifications for Construction and Maintenance of Highways Streets & Bridges.

(2) To preserve and protect trees, bushes, and other aesthetic features on the right of way, the department may specify the extent and methods of tree, bush, shrubbery, or any other aesthetic feature's removal, trimming, or replacement, in conjunction with paragraph (1) of this subsection. The district engineer shall use due consideration in establishing the value of trees and other aesthetic features in the proximity of a proposed utility facility [~~line~~] and any special district requirements justified by the value of the trees and other aesthetic features.

(3) If settlement or erosion occurs due to the actions of the utility, the utility shall, at its expense, reshape, reseed, or resod the area as directed by the department. Reseeding, resodding, or repair under this section shall be completed within a reasonable period of time that is acceptable to the department.

(4) Pruning of trees shall comply with the department's Roadside Vegetation Management Manual. When unapproved pruning or cutting occurs, the utility shall be responsible for the replacement of trees or for damages to existing trees and bushes.

(5) Highways adjacent to utility construction sites shall be kept free from debris, construction material, and mud. At the end of every construction day, construction equipment and materials shall be removed from the horizontal clearance, placed as far from the pavement edge as possible, and properly protected.

(6) The utility shall reimburse the department for all costs incurred to repair damage to the right of way that results from the actions of the utility. These costs may include restoration of and repairs to the pavement structure, drainage structures, [~~roads, drives,~~] terrain, landscaping, or fences.

(c) Traffic control.

(1) The utility shall be responsible for the safety of, and shall minimize disruption to, the traveling public with proper traffic control.

(2) Appropriate measures shall be taken in the interests of safety, traffic convenience, and access to adjacent property that meet the requirements of the department's Compliant Work Zone Traffic Control Device List. The utility shall place appropriate signs, markings, and barricades before beginning work and shall maintain them to warn motorists and pedestrians properly. All traffic control devices shall conform to the TMUTCD and the National Cooperative Highway Research Project Report 350.

(3) All utility pits opened within the horizontal clearance must, in compliance with National Cooperative Highway Research Project Report 350, [~~shall~~] be properly protected[~~, in compliance with National Cooperative Highway Research Project Report 350,~~] with concrete traffic barriers, metal beam guard fencing, appropriate end treatments, or other appropriate warning devices.

(d) Work restrictions.

(1) The department reserves the right to halt construction or maintenance during hazardous situations, such as inclement weather, peak traffic hours, special events, or holidays, or for non-compliance with a use and occupancy agreement. Requests for emergency maintenance shall be directed to the appropriate district office.

(2) If the department determines that the facility was not constructed or maintained [~~installed~~] in the location or in the manner shown on the approved construction plans, the department may require

the utility to take appropriate corrective action as determined by the department.

(e) Utility work included in a highway construction contract.

(1) If a state highway improvement project requires the adjustment or relocation of a utility facility, the utility by agreement with the department may authorize the department to include the adjustment or relocation of the utility facility in the highway construction contract. The department may enter into an agreement under this subsection only if the district engineer determines that:

(A) including the adjustment or relocation of the utility facility in the construction contract is necessary to meet the construction sequencing of the state highway improvement project or will expedite the project;

(B) the adjustment or relocation of the utility facility by the department's contractor can be accomplished in conformity with all applicable local, state, and federal regulations for the installation of the particular utility facility; and

(C) the adjustment or relocation of the utility facility by the department's contractor will not involve an unreasonably high risk of:

(i) danger to the traveling public, highway, or construction workers due to the presence of hazardous materials, high pressure gas or liquid petroleum lines, or other potentially dangerous utility products; or

(ii) prolonged interruption of the delivery of a utility product that is essential to public health and safety.

(2) The utility must approve the plans, specifications, and cost estimate for the adjustment or relocation of the utility facility before it may be included in the construction contract. The utility is responsible for ensuring that the design and construction of the utility facility meet all regulatory and environmental compliance requirements.

(3) If the adjustment or relocation of the utility facility included in the construction contract is not 100 percent reimbursable by the department under the requirements of Transportation Code, §203.092, the utility is responsible for advancing or otherwise paying to the department the utility's prorata share under state law of the funds necessary for construction work related to the adjustment or relocation.

(4) An agreement under this subsection must provide:

(A) the estimated cost of the construction work related to the adjustment or relocation, including the cost of any betterment, to be performed by the department's contractor, and the utility's prorata share of the cost based on eligibility for department cost participation under Transportation Code, §203.092;

(B) for payment to the department of the utility's prorata share, if any, of the estimated cost under paragraph (4)(A) of this subsection at least 45 days before the date set for the receipt and opening of bids for the highway construction contract;

(C) a description of the construction work related to the adjustment or relocation, including any betterment, that is to be performed by the utility at no cost to the department;

(D) for concurrent construction inspection by the utility during construction;

(E) that the utility is responsible for physically connecting the installed utility facility to its existing utility facilities to make the installed facility operational and for performing any tests required to assure compliance with all applicable safety standards and regulations;

(F) for final acceptance by the utility of the adjustment or relocation after the construction work is completed; and

(G) any other provisions that the district engineer considers to be necessary or desirable.

(5) When used in this subsection, "betterment" means any upgrading of the utility facility being adjusted or relocated that is not attributable to the highway construction project nor required in order to comply with any other law, code, or ordinance, and is made solely for the benefit and at the election of the utility.

(6) During the adjustment or relocation of a utility facility under an agreement under this subsection, the utility remains liable under any certificate of service. The department is not responsible for any issue related to the design or construction of the adjustment or relocation of the utility facility after final acceptance by the utility of the utility facility.

(7) After completion of the construction work under an agreement under this subsection, the utility is responsible for any ongoing maintenance of the utility facility in compliance with this section.

(8) If the adjustment or relocation of the utility facility is reimbursable by the department under the requirements of Transportation Code, §203.092, the department will reimburse the utility for eligible expenses incurred in approving and inspecting the construction work.

(9) All provisions of this subchapter and 43 TAC Chapter 21, Subchapter B (relating to Utility Adjustment, Relocation, or Removal) that apply to the design, estimates, and scope of an adjustment or relocation apply to a project carried out under an agreement entered into under this subsection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 29, 2011.

TRD-201102862
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 463-8683

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CHAPTER 25. TRAFFIC OPERATIONS
SUBCHAPTER B. PROCEDURES FOR ESTABLISHING SPEED ZONES

43 TAC §25.26

The Texas Department of Transportation (department) proposes new §25.26, Provisional Traffic and Engineering Investigation Requirements, concerning Procedures for Establishing Speed Zones.

EXPLANATION OF PROPOSED NEW SECTION

House Bill 1353, 82nd Legislature, Regular Session, 2011, allows the department to establish a 75 mile per hour speed limit on a portion of the state highway system if the Texas Transportation

Commission (commission) determines that such a speed limit is reasonable and safe based on an engineering and traffic investigation. With implementation of HB 1353, the department needs to review all current 70 mile per hour zones to determine if an increase to 75 miles per hour is warranted. This new process relies on an 85th percentile engineering study.

New §25.26 provides a provisional traffic and engineering investigation process to implement the timely study of highways that may qualify for the new increased speed. The new section provides that the department can utilize the streamlined procedures for the increase to 75 miles per hour from a current 70 mile per hour zone. The procedure includes the completion of an 85th percentile speed check at a minimum of one location within the current speed zone. Under current speed study rules, specific speed check intervals are set out to establish the boundaries of any approved speed zone. Due to the fact that the current 70 mile per hour speed zone has been determined by a previous engineering study, additional speed check locations are not required to set the boundaries of the speed zone, therefore in some instances only one speed check location is necessary. Section 25.26 does not prohibit additional speed check locations if the department determines that additional traffic data are necessary to establish the appropriate speed limit.

Section 25.26 will allow the investigation to be submitted in a summary format eliminating the need to complete a strip map. When implementing previous statewide speed limit changes, the department utilized a summary reporting option instead of the required strip map. The strip map provides illustrated documentation the department uses to establish the boundaries of the speed zone. As previously stated the boundaries of the speed zone have been established in a previous traffic and engineering study. It is unnecessary for the strip map to be submitted since the speed zone boundaries have been established.

Section 25.26 provides that the other provisions of Chapter 25, Subchapter B related to establishing a speed limit apply to an increase under §25.26 unless there is a conflict. If there is a conflict, §25.26 controls. Thus, the requirements of 85th percentile speed check procedures, such as requirements related to the length of time of the study and the number of vehicles, apply without having to restate those provisions within the rule.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the new section as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new section.

Carol Rawson, P.E., Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new section.

PUBLIC BENEFIT AND COST

Ms. Rawson has also determined that for each year of the first five years in which the section is in effect, the public benefit anticipated as a result of enforcing or administering the new section will be timely review of current 70 mile per hour speed zones. There are no anticipated economic costs for persons required to comply with the section as proposed. There will be no adverse economic effect on small businesses.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 9:00 a.m. on August 31, 2011, Texas Department of Transportation, 200 East Riverside Drive, in Room 1A-1, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Government and Public Affairs Division, 125 East 11th Street, Austin, Texas 78701-2483, (512) 305-9137 at least two working days prior to the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

Written comments on the proposed new §25.26 may be submitted to Carol Rawson, P.E., Director, Traffic Operations Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on September 12, 2011.

STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §545.353, which authorizes the commission to establish speed limits and adopt the procedures for establishing speed zones.

CROSS REFERENCE TO STATUTE

Transportation Code, §545.353.

§25.26. Provisional Traffic and Engineering Investigation Requirements.

(a) This section applies only to increasing the speed limit within an existing speed zone from 70 miles per hour to 75 miles per hour, as authorized by the legislature.

(b) The speed zone study necessary for increasing the speed limit from 70 to 75 miles per hour may, at the sole discretion of the department, be limited to the determination of the 85th percentile speed at one or more speed check locations within the established speed zone. Because the boundaries of the speed zone have been established for the 70 mile per hour zone, a strip map is not required for the increase.

(c) The provisions of this subchapter related to establishing a speed limit apply to an action under this section unless such a provision conflicts with this section, in which event this section controls to the extent of the conflict.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 29, 2011.

TRD-201102863
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: September 11, 2011
For further information, please call: (512) 463-8683

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER P. DIAPREPES ROOT WEEVIL QUARANTINE

4 TAC §19.161

The Texas Department of Agriculture (the department) adopts an amendment to §19.161, concerning the quarantined area for the Diaprepes root weevil, *Diaprepes abbreviatus* (L), with a change to the proposal published in the June 24, 2011, issue of the *Texas Register* (36 TexReg 3775). The department deploys Tedder traps in the area adjacent to the quarantined area to determine if the Diaprepes root weevil infestation has expanded beyond the current quarantined area. Diaprepes adults were recently trapped at two sites just outside the area quarantined for the pest in McAllen, Texas. One Diaprepes adult was trapped at 9401 North 10th Street, and eight Diaprepes adult were trapped in a citrus grove 0.38 mile west of intersection of Hobbs Drive and North 2nd street. The amendment is adopted to prevent further spread of the Diaprepes root weevil and facilitate its suppression.

The department believes addition of the two sites near the McAllen quarantined area, where the Diaprepes root weevils were detected, to the quarantine on a permanent basis is both necessary and appropriate to prevent the spread of the Diaprepes root weevil into the nearby areas and into nursery growing areas of Texas. Without this amendment, other states are likely to quarantine Texas. As a result, Texas could lose important export markets and would require regulatory treatments to export Texas nursery stock, resulting in increased production costs to producers. In addition, citrus producers will be faced with the added control cost and the losses caused by this pest. The amendment prevents artificial spread of the quarantined pest and enhances chances for successful pest suppression. Amended §19.161 expands the quarantined area in correspondence with the detection of the Diaprepes root weevils adjacent to the current quarantined area. The proposed language has been changed by adding the full address of the quarantined area, 9401 North 10th Street, which was inadvertently omitted in the proposal.

No comments were received on the proposal.

The amendment is adopted under the Texas Agriculture Code, §71.001, which authorizes the department to establish a quarantine for an infested area against an in-state pest if it determines the pest is dangerous and is not widely distributed in the state; and §71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances.

§19.161. Quarantined Areas.

The quarantined areas are:

(1) Within Texas:

(A) the citrus grove located in Hidalgo County, McAllen, Texas, 0.20 miles West of the intersection of Hobbs Drive and North 2nd Street and the area within approximately 300 yards surrounding the grove in all directions; the property located at 9601 North 10th Street, Unit 1-11, Hidalgo County, McAllen, Texas and the surrounding area within approximately 300 yards in all directions, including the citrus grove, comprised of approximately 20 acres, located south of the Timberhill Mobile Park; the property located at 3539 Plaza del Lagos, Hidalgo County, Edinburg, Texas and the surrounding area within approximately 300 yards in all directions; the two adjoining citrus groves located south of the intersection of the Calle Conejo and Chachalaca Drive in Cameron County, Bayview, Texas, and the area within approximately 300 yards surrounding the grove in all directions; the property located at 6027 Glen Cove Street, Houston, Harris County, Texas, and the surrounding area within approximately 300 yards in all directions; Russ Pitman Park, Bellaire, Harris County, Texas and the surrounding area within approximately 300 yards in all directions; the property located at 9401 North 10th Street, Hidalgo County, McAllen, Texas and the surrounding area within approximately 300 yards in all directions; and the citrus grove located in Hidalgo County, McAllen, Texas, 0.38 miles West of the intersection of Hobbs Drive and North 2nd Street and the area within approximately 300 yards surrounding the grove in all directions; and

(B) any other area where the quarantined pest is detected.

(C) The map of the quarantined area in Cameron and Hidalgo counties may be obtained from the Valley Regional Office, 900-B, East Expressway, San Juan, Texas 78589, and for Harris County from Gulf Coastal Regional Office, 5425 Polk Avenue, Houston, Texas 77023.

(2) Outside Texas:

(A) State of Florida: Counties of Broward, Dade, DeSoto, Collier, Glades, Hendry, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Marion, Martin, Orange, Osceola, Palm Beach, Pasco, Polk, Seminole, St. Lucie, Sumter, Volusia;

(B) the Commonwealth of Puerto Rico;

(C) the islands of the West Indies; and

(D) any other area where the quarantined pest is detected.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 29, 2011.

TRD-201102878
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 9, 2011
Proposal publication date: June 24, 2011
For further information, please call: (512) 463-4075

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CHAPTER 23. ROSE GRADING

4 TAC §§23.1, 23.2, 23.4, 23.5

The Texas Department of Agriculture (the department) adopts the repeal of Chapter 23, §§23.1, 23.2, 23.4 and 23.5, concerning rose grading, without changes to the proposal as published in the June 17, 2011, issue of the *Texas Register* (36 TexReg 3673). The repeal is adopted to implement provisions of House Bill 3199, 82nd Legislative Session, 2011 (HB 3199), which eliminated the requirements and penalties related to rose grading described in Chapter 12 of the Texas Agriculture Code and repealed Texas Agriculture Code, Chapter 121 in its entirety, eliminating grading and labeling requirements for roses.

No comments were received on the proposal.

The repeal is adopted under Texas Agriculture Code, Chapter 121, as amended by House Bill 3199, which eliminates the requirements and penalties related to rose grading; and takes effect immediately since it received a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 29, 2011.

TRD-201102858
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: August 18, 2011
Proposal publication date: June 17, 2011
For further information, please call: (512) 463-4075

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PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 38. TRICHOMONIASIS

4 TAC §§38.1, 38.3, 38.6, 38.8

The Texas Animal Health Commission (Commission) adopts amendments to §38.1, concerning Definitions, §38.3, concerning Infected Bulls and Herds, §38.6, concerning Official Trichomoniasis Tests, and §38.8, concerning Herd Certification Program--Breeding Bulls, without changes to the proposed text as published in the June 17, 2011, issue of the *Texas Register* (36 TexReg 3674) and will not be republished.

These amendments are for the purpose of making changes to the Trichomoniasis control program.

The Commission convened the Bovine Trichomoniasis Working Group (BTWG) in 2008, to provide recommendations to the Commission on the components and implementation strategy for a Trichomoniasis (Trich) Control Program for the State of Texas. The BTWG recently completed an annual review of the Trich program and made recommendations to the Commission on amendments to the Trich program. The BTWG also recommended that the program should be continued as provided through §38.7.

Representatives of the BTWG met on May 4, 2011, to review specific requests received for program changes and to evaluate the effectiveness of current rules. Requests were received from cattle producers, auction market operators, veterinarians, and TAHC personnel. TAHC state epidemiologist Andy Schwartz gave an overview of the statewide program, and TAHC regional director Tommy Barton provided the agency perspective from a field office dealing directly with veterinarians, herd owners and market operators. Dr. Alfonso Clavijo gave the TVMDL perspective on the Trich program, and provided handouts showing the test prevalence and distribution of positive bulls across the state over the past year. He also discussed an ongoing T. foetus PCR pooling study being coordinated by the Parasitological Committee of the AAVLD. The study is to determine the efficacy of pooling of samples for T. foetus testing by real-time PCR. The study will also look at DNA degradation with continued incubation. Results are to be reported at the annual AAVLD meeting in September 2011.

The group made a number of recommendations associated with these requirements. The first area of change was in §38.1, which provides definitions for terms utilized in this chapter. The recommendation was to change the definition of "Exempt Cattle" from "Cattle that have been physically rendered sterile for breeding" to "Cattle that have been physically rendered incapable of intromission at a facility recognized by the TAHC". The reason was to more clearly identify the type of procedure that is recognized as acceptable by the veterinary community.

The next changes were for §38.3, which is entitled "Infected Bulls and Herds". This describes how infected bulls and their associated herds are handled. In subsection (a) requirements are added to address retesting of positive bulls. Breeding bulls which have been disclosed as reactors may be retested under specific circumstances. The animal owners, or their agents, must make a request to the TAHC Regional Director where the bull is located. The retest(s) must be conducted within 30 days after the date of the original test. The test(s) must be submitted to the Texas Veterinary Medical Diagnostic Laboratory (TVMDL). The positive bull must be held under quarantine along with all other exposed bulls on the premise and they must have two negative PCR tests to be released. There is also a change to subsection (c) by adding that breeding bulls that were in a herd with a positive and needing to be retested must be retested within sixty (60) days. This is to ensure that testing is done in an appropriate timeframe.

The Commission is adding a new subsection (d) which provides that breeding bulls in a herd with positive bulls may be maintained without meeting the requirements of two (2) negative tests within sixty (60) days, provided they execute a herd control plan.

If so, then all breeding bulls may be tested annually. This will only be authorized for a maximum of three (3) years, then all exposed bulls shall be tested in accordance with this section.

The next section for recommended changes is §38.6, which is entitled "Official Trichomoniasis Tests". Basically, this amendment is to allow the approved laboratory to pool individually submitted samples to be PCR tested. This must be approved by the TAHC Regional Office where the animals are located, but it is intended to allow the producer to reduce their testing cost. However, veterinary practitioners may not submit pooled samples for either releasing test.

The last section to be amended is §38.8 and is entitled "Herd Certification Program--Breeding Bulls". Under the current subsection (b) there is a conflict in the language. The rule indicates for the first three years of testing to qualify for the herd certification it is necessary for all non-virgin bulls to be tested, but it also indicated they could be sent to slaughter without being tested. All bulls need to be tested even if going to slaughter in order to ensure that positive animals are removed from the herd. If slaughter bulls were not tested they could have Trichomoniasis and maintain infection in the herd without being disclosed. This was an unintentional loophole that is closed through this amendment.

No comments were received regarding adoption of the rules.

STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That authority is found in §161.061.

As a control measure, the Commission, by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the Commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 25, 2011.

TRD-201102805
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: August 14, 2011
Proposal publication date: June 17, 2011
For further information, please call: (512) 719-0724

CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.8

The Texas Animal Health Commission (Commission) adopts amendments to §51.8, concerning Cattle, without changes to the proposed text as published in the June 17, 2011, issue of the *Texas Register* (36 TexReg 3677) and will not be republished.

The amendments are for the purpose of making changes to the entry requirements for bulls.

The Commission convened a Bovine Trichomoniasis Working Group (BTWG) in 2008, to provide recommendations to the Commission on the components and implementation strategy for a Trichomoniasis (Trich) Control Program for the State of Texas. The BTWG recently completed an annual review of the Trich program and made recommendations to the Commission on amendments to the Trich program. The BTWG also recommended that the program be continued as provided through §38.7.

Representatives of the BTWG met on May 4, 2011, to review specific requests for program changes received and to evaluate the effectiveness of current rules. Requests were received from cattle producers, auction market operators, veterinarians, and Commission personnel. Specific modifications to the Commission's entry requirements for out of state breeding bulls were recommended and are being acted on through this rule adoption.

The group made several recommendations for modifications to §51.8(c) dealing with Trich requirements for breeding bulls entering Texas. The rules currently provide that breeding bulls less than 24 months of age may enter on a virgin certificate from the bull owner. However, the group discussed the fact that this is an area where there can be fraud in representing the virgin status of the animal and thereby increases the risk of positive bulls being shipped to Texas. As such, the group recommended that the Commission drop the age for not being tested down to 12 months and remove the virgin certificate requirement. The Commission agreed and is modifying that subsection to remove that standard and more clearly coordinate the rule. Also, it was recommended that we no longer recognize the Culture Test for out of state breeding bulls. The Culture Test can have great discrepancy in test results and in order to reduce the risk of positive animals entering the state, that test will no longer be recognized for entry. Lastly, we will allow untested bulls from out of state to enter Texas direct to a feedyard that has executed a Trich Certified Facility Agreement, if they are on a VS 1-27 permit and accompanied by an entry permit issued by the Commission, be-

cause this type of movement with bulls destined to slaughter are a reduced risk for Trich exposure.

No comments were received regarding adoption of the rule.

STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That authority is found in §161.061.

As a control measure, the Commission, by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

Section 161.101 provides that the Commission may require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report the existence of specific diseases among livestock, exotic livestock, bison, domestic fowl, or exotic fowl.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 25, 2011.

TRD-201102806
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: August 14, 2011
Proposal publication date: June 17, 2011
For further information, please call: (512) 719-0724

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CHAPTER 59. GENERAL PRACTICES AND PROCEDURES

4 TAC §59.11

The Texas Animal Health Commission adopts amendments to §59.11, concerning Certificate of Veterinary Inspection, with changes to the proposed text as published in the June 17, 2011, issue of the *Texas Register* (36 TexReg 3680) and will be republished. The section name will change from "Certificate of Veterinary Inspections" to "Certificate of Veterinary Inspection".

The purpose of the amendment is to raise the fee for Certificates of Veterinary Inspection (CVI).

Animals being exported or transported to locations such as livestock shows must be inspected and/or tested by an accredited veterinarian to ensure they meet the testing and certification requirements of the destination authority and that required information is recorded on a CVI. The Commission issues CVIs to veterinarians and the veterinarians fill in the relevant information upon inspection and/or testing of the animals. The Commission currently issues three types of CVIs: 1.) "Certificate of Veterinary Inspection" TAHC Form 00-10; 2.) "Equine Certificate of Veterinary Inspection" TAHC Form 99-08; and 3.) "Equine Interstate Movement Passport" TAHC Form 00-02.

Texas Agriculture Code, §161.0601(d), authorizes the Commission to establish the fee for the certificate. In 2005, the Commission established a fee of $5.00 for each certificate. Based on the overall increasing cost of the agency in supporting its mission, the agency is proposing to amend and increase the fee from $5.00 to $7.00 per certificate.

The agency received two comments regarding the proposed amendment. The first requested that the agency does not raise the fee for CVIs. The commenter states "[p]lease do not increase fees for CVIs. It penalizes livestock owners for doing the right thing. When times are tough, as they are now, agencies should make do with less rather than making times even tougher for Texas livestock owners by raising their fees." The Commission appreciates the comment and understands that these are tough times for Texas livestock owners. However, as the agency goes forward in being more of a fee based agency, this is one of the revenue methods that the agency must rely upon to sustain our activities.

The second comment was from Farm and Ranch Freedom Alliance (FARFA). FARFA advocates for farmers, ranchers, and homesteaders through public education and lobbying to assure their independence in the production and marketing of their food and to prevent the imposition of unnecessary regulatory burdens that are not in the public interest. FARFA also advocates for consumer's access to information and resources to obtain health foods of their choice. They recognize that the agency must raise fees because of the current budget crisis, but they are concerned with the increase in fees for CVIs. Specifically, they indicate that the agency has not provided any analysis of the cost of CVIs to the agency. The price of CVIs is not predicated on their production and distribution costs. The price, and price increase, represents simple cost recovery mechanisms for one of the Commission's core missions, assurance of animal health and their ability to move intrastate and interstate which do provide reasonable assurances of the animals being healthy and disease-free. As FARFA states in their letter they advocate for consumers' access to information and resources to obtain health foods of their choice. We are a part of that regulatory effort in controlling and eradicating disease which could negatively impact producing and maintaining healthy food animals.

They also object to the agency's claim that "the public benefit anticipated as a result of enforcing the rule will allow the Commission to maximize its appropriation of general revenue funds by applying the net revenues collected as a cost recovery mechanism to offset the costs of state services and regulatory functions that the Commission is statutorily charged to perform." In essence, the agency claims that the fee increase is a public benefit because it will fund the agency's work. Under this reasoning, every tax and fee is a public benefit. The Commission will not engage in an esoteric argument regarding the perception that this reasoning is applied to every tax and fee increase. The bottom line is the agency has a critical mission of protecting those agricultural animal industries and in order to adequately perform that mission, we need the necessary fiscal resources as we have been legislatively directed to become more self sustaining using fees. This specific statutory authority as found in §161.0601 does not have any limitation in how much in fees can be assessed by the agency for these documents. The agency will be able to keep and utilize the $2.00 increase to cover the cost of production and help to support the agency in the performance of its critical and core mission functions and that is a public benefit.

No changes were made regarding the comments.

STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. Section 161.0601 authorizes the Commission through rulemaking to issue and to set the fee for a certificate of veterinary inspection for the transport of domestic and exotic livestock and fowl. Furthermore, the Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this Code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061. As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require, by §161.054, testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.048.

§59.11. Certificate of Veterinary Inspection.

(a) All Veterinarians, licensed and accredited in Texas, that utilize a certificate of veterinary inspection (CVI) for livestock, exotic livestock or domestic fowl shall utilize a current CVI issued by the Commission on or after September 1, 2005. All certificates printed and issued prior to September 1, 2005 will be null and void for issuance after October 31, 2005.

(b) The Commission shall assess a fee of seven ($7.00) dollars for each individual CVI. CVI's will be sold in books of ten (10) certificates per book.

(c) The CVI may be procured from the Commission through a written request accompanied by a check or money order, for the full amount to cover the requested number of CVI's. The written request shall be sent to TAHC, P.O. Box 12966, Austin, Texas 78711-2966. When established the Commission may also accept phone orders when paid for by an accepted credit card. Phone orders may be made by calling 1-800-550-8242.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 25, 2011.

TRD-201102807
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: August 14, 2011
Proposal publication date: June 17, 2011
For further information, please call: (512) 719-0724

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 113. REGISTRATION OF SECURITIES

7 TAC §113.12, §113.14

The Texas State Securities Board adopts amendments to §113.12, concerning applicability of guidelines to exempt offerings, and §113.14, concerning statements of policy, without changes to the proposed text as published in the June 17, 2011, issue of the *Texas Register* (36 TexReg 3681).

The cross-references to statements of policy ("SOPs") adopted by the North American Securities Administrators Association ("NASAA") are correct and the NASAA Registration of Commodity Pool Programs, as amended on May 7, 2007, is reflected on the list of SOPs adopted by reference and utilized when reviewing applications for registration of securities.

There will be an increase in uniformity with other states when reviewing applications to register securities.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Article 581-7.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 29, 2011.

TRD-201102870

Benette L. Zivley
Securities Commissioner
State Securities Board
Effective date: August 18, 2011
Proposal publication date: June 17, 2011
For further information, please call: (512) 305-8303

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CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.2

The Texas State Securities Board adopts an amendment to §115.2, concerning application requirements, without changes to the proposed text as published in the June 17, 2011, issue of the *Texas Register* (36 TexReg 3682).

A dealer must register as that dealer's Designated Officer ("D.O.") an officer, partner, or sole proprietor of that dealer, and an individual filing a dealer application as a sole proprietor is required to submit a Form U-4.

The application review process will be streamlined by ensuring that a dealer's D.O. is a person who meets the definition of control, and staff will be able to obtain enhanced information on a sole proprietor dealer that is not otherwise provided on the dealer's Form BD.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Articles 581-12, 581-13, and 581-18.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 29, 2011.

TRD-201102871
Benette L. Zivley
Securities Commissioner
State Securities Board
Effective date: August 18, 2011
Proposal publication date: June 17, 2011
For further information, please call: (512) 305-8303

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7 TAC §115.8

The Texas State Securities Board adopts an amendment to §115.8, concerning fee requirements, without changes to the proposed text as published in the June 17, 2011, issue of the *Texas Register* (36 TexReg 3683).

Form U-4 filing fees are reduced for an individual filing a dealer application as a sole proprietor who is also required to file a Form U-4 application to register as a designated officer.

Certain small businesses required to register a sole proprietor in multiple capacities can receive relief from payment of the full fees required under the Texas Securities Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Articles 581-28-1 and 581-42.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 42.B provides the Board with the authority to adopt rules reducing fees for persons registered in two or more capacities.

The adopted amendment affects Texas Civil Statutes, Articles 581-12, 581-13, 581-18, 581-35, 581-41, and 581-42.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 29, 2011.

TRD-201102872
Benette L. Zivley
Securities Commissioner
State Securities Board
Effective date: August 18, 2011
Proposal publication date: June 17, 2011
For further information, please call: (512) 305-8303

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CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §116.1

The Texas State Securities Board adopts an amendment to §116.1, concerning general provisions, without changes to the proposed text as published in the June 17, 2011, issue of the *Texas Register* (36 TexReg 3684).

A definition is added for a term used in the chapter.

It will be easier for persons reading the chapter to locate definitions for terms used in the chapter.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Articles 581-12, 581-13, and 581-18.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 29, 2011.

TRD-201102873
Benette L. Zivley
Securities Commissioner
State Securities Board
Effective date: August 18, 2011
Proposal publication date: June 17, 2011
For further information, please call: (512) 305-8303

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7 TAC §116.2

The Texas State Securities Board adopts an amendment to §116.2, concerning application requirements, without changes to the proposed text as published in the June 17, 2011, issue of the *Texas Register* (36 TexReg 3684).

An investment adviser must register as that adviser's Designated Officer ("D.O.") an officer, partner, or sole proprietor of that adviser, and an individual filing an investment adviser application as a sole proprietor is required to submit a Form U-4.

The application review process will be streamlined by ensuring that an investment adviser's D.O. is a person who meets the definition of control, and staff will be able to obtain enhanced information on a sole proprietor investment adviser that is not otherwise provided on the adviser's Form ADV.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Articles 581-12, 581-13, and 581-18.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 29, 2011.

TRD-201102874
Benette L. Zivley
Securities Commissioner
State Securities Board
Effective date: August 18, 2011
Proposal publication date: June 17, 2011
For further information, please call: (512) 305-8303

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7 TAC §116.5

The Texas State Securities Board adopts an amendment to §116.5, concerning minimum records, without changes to the proposed text as published in the June 17, 2011, issue of the *Texas Register* (36 TexReg 3685).

Investment advisers may no longer opt to comply with the Securities and Exchange Commission's record-keeping rules to meet minimum record-keeping requirements, and those investment advisers with a principal place of business located in Texas will be required to collect and maintain certain basic information about the clients they advise.

Registered investment advisers are alerted of how to satisfy the "know your client" requirement prior to making investment recommendations to clients; protection is provided to both investment advisers and their clients; and an unneeded record-keeping option is eliminated.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Article 581-13-1.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 29, 2011.

TRD-201102875
Benette L. Zivley
Securities Commissioner
State Securities Board
Effective date: August 18, 2011
Proposal publication date: June 17, 2011
For further information, please call: (512) 305-8303

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7 TAC §116.8

The Texas State Securities Board adopts an amendment to §116.8, concerning fee requirements, without changes to the proposed text as published in the June 17, 2011, issue of the *Texas Register* (36 TexReg 3687).

Form U-4 filing fees are reduced for an individual filing an investment adviser application as a sole proprietor who is also required to file a Form U-4 application to register as a designated officer.

Certain small businesses required to register a sole proprietor in multiple capacities can receive relief from payment of the full fees required under the Texas Securities Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Articles 581-28-1 and 581-42.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out

and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 42.B provides the Board with the authority to adopt rules reducing fees for persons registered in two or more capacities.

The adopted amendment affects Texas Civil Statutes, Articles 581-12, 581-13, 581-18, 581-35, 581-41, and 581-42.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 29, 2011.

TRD-201102876
Benette L. Zivley
Securities Commissioner
State Securities Board
Effective date: August 18, 2011
Proposal publication date: June 17, 2011
For further information, please call: (512) 305-8303

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CHAPTER 131. GUIDELINES FOR CONFIDENTIALITY OF INFORMATION

7 TAC §131.1

The Texas State Securities Board adopts an amendment to §131.1, concerning information sharing, without changes to the proposed text as published in the June 17, 2011, issue of the *Texas Register* (36 TexReg 3688).

The Commissioner is authorized to share confidential information with officials appointed by a state or federal court in a proceeding involving a governmental or regulatory authority, including bankruptcy trustees and receivers.

The Commissioner will be able to more easily share information with other entities acting to preserve assets or otherwise assist investors.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Articles 581-28-1 and 581-28.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 28.B provides that the Board approve governmental and regulatory authorities and associations of governmental and regulatory authorities to which the Commissioner may disclose confidential information at the Commissioner's discretion.

The adopted amendment affects Texas Civil Statutes, Article 581-28.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 29, 2011.

TRD-201102877
Benette L. Zivley
Securities Commissioner
State Securities Board
Effective date: August 18, 2011
Proposal publication date: June 17, 2011
For further information, please call: (512) 305-8303

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.15

The Railroad Commission of Texas adopts amendments to §3.15, relating to Surface Equipment Removal Requirements and Inactive Wells, without changes to the proposal published in the June 10, 2011, issue of the *Texas Register* (36 TexReg 3567). On February 8, 2011, the Commission adopted, on an emergency basis, amendments to subsection (l)(3). The emergency amendments became effective immediately upon filing with the Secretary of State on February 8, 2011, and were in effect for 120 days, through June 7, 2011. The Commission adopted a 60-day extension of these emergency amendments, effective through August 6, 2011.

The Commission received three comments on the proposal, including one from an association, which stated support for the proposed amendments in their entirety.

Kinder Morgan CO2 Company, L.P. ("KMCO2"), a transporter and marketer of carbon dioxide in North America, an oil producer in Texas, and owner and operator of CO2 source fields, natural gas and gasoline processing plants, and a crude oil pipeline, applauded the Commission's efforts and wholeheartedly favored the proposed changes to §3.15(1)(3).

KMCO2 stated that, by permitting the choice of fluid level tests on an annual basis or an hydraulic pressure test every five years, the Commission has created a regimen that both protects the State's fresh water sources and obligates a well owner to undertake active efforts if that well owner wants to continue the well as inactive as opposed to plugging it, all without altering already established state law. This approach as embodied in the proposed amendments allows a well owner flexibility in making his/her economic decision whether to engage in production of crude and natural gas, often through use of enhanced oil recovery, on a realistic and sensible schedule, or alternatively, to plug a well.

KMCO2 noted the Commission's statement that, as of March 31, 2011, there were approximately 35,000 25/10 wells (wells that are 25 years old and 10 years inactive) in Texas that have not been tested with a pressure test, also called a mechanical integrity test ("MIT"), within the last five years. The Commission noted that there is an approximate cost differential of $5,500 which would be incurred *per well,* absent enactment of the proposed amendments. KMCO2 observed that, in reality, costs could be sharply higher in many instances. Many inactive wells in Texas are not currently engineered to accommodate an

MIT test as now required by the rule unless a workover rig can be utilized. In some cases, this inability to accommodate an MIT without a rig is due to the optimal lift design, the geologic formation, or the general location of the well. Utilizing a rig adds significant risk compared to surface testing (fluid level or pressure test) with no rig. It is also extremely costly and can be difficult in a market such as the current one where demand for rigs is high. The cost of hydraulic pressure testing 25/10 wells that do not contain a packer or similar wellbore isolation equipment will range from $50,000-$100,000 *per well* depending on the type of rig required (conventional or snubber). The type of rig utilized is particularly important where shallow wells with moderate to high pressure are concerned, in order to prevent an uncontrolled well situation. The adopted amendments will not have a disparate impact on small businesses vs. larger enterprises; rather businesses of all sizes will be similarly impacted, and the flexibility allowed in the economic decision can encourage further oil production in Texas.

KMCO2 thanked the Commission for consideration of the issues raised in this rulemaking and urged adoption of the amendments as proposed.

The Texas Oil and Gas Association ("TxOGA") expressed appreciation for the emergency amendments to §3.15(1)(3) and encouraged the amendments be adopted as proposed.

TxOGA noted that, as proposed, §3.15(l)(3) allows the use of fluid level tests on an annual basis or an hydraulic pressure test every five years. This testing regimen is consistent with state law and would yield results effectively applicable to efforts to protect the State's fresh water sources. Operators with 25/10 wells would be required to expend effort and expense in periodic testing and obtain Commission approval of those testing results in order to keep such wells inactive or, alternatively, to plug them.

Currently §3.15(l)(3) requires either a successful fluid level test or a successful hydraulic pressure test (also known as a mechanical integrity test or "MIT") for all inactive wells that are more than 25 years old to demonstrate that an inactive well is not an immediate threat to water resources. All other factors being equal, the older a well is and the longer a well has been inactive, the more likely the well is to suffer a mechanical failure or otherwise become a potential threat to ground or surface water.

A successful fluid level test does not necessarily establish that a well could not be a conduit for fluids into usable quality zones, but it does demonstrate that, as of the time of the test, any fluids in the well are sufficiently separated from usable quality water zones that the well poses no immediate threat to usable quality water. A successful hydrostatic MIT test affirmatively demonstrates that a wellbore retains its mechanical integrity and cannot serve as a conduit for downhole fluids into usable quality water zones at the time of the test. Fluid level tests are significantly less expensive than mechanical integrity tests. In addition, the cost of a mechanical integrity test can vary significantly based on a number of factors, including whether the well has tubing in place, whether the operator owns its own rig, how the well is equipped at the surface, the condition of the well, and the depth of the well. Generally, a fluid level test costs less than $500 while an MIT typically costs between $1500 and $10,000, and can cost much more depending on the well configuration and geology involved.

Texas Natural Resources Code, §89.023(a)(2), effective September 1, 2010, mandates that the Commission may not grant an inactive well a plugging extension unless it is in compliance with all Commission rules. Texas Natural Resources Code §89.022(c), also effective September 1, 2010, prohibits the Commission from renewing the P-5 organization report of an operator that has not obtained a plugging extension for each of its inactive wells. Texas Natural Resources Code §89.023(a)(4)(D), also effective September 1, 2010, allows the Commission to grant an extension to the plugging deadline for an inactive well if, *inter alia,* the operator files documentation of a fluid level or hydraulic pressure test of the inactive well.

Unlike a fluid level test, the MIT testing of many wells requires the services of a workover rig. There are approximately 111,000 inactive wells in Texas and 39,213 of these wells had been inactive for 10 years or more as of March 31, 2011. Although some of these 10 year inactive wells have been MIT tested within the last five years, the overwhelming majority have not. There is a shortage of sufficient workover rigs for all operators to conduct required MITs on their 10-year inactive wells during the one-year period after September 1, 2010. Further, requiring MIT testing of wells that are 25 years old and 10 years inactive may impact those wells that could be considered for future enhanced oil recovery ("EOR") projects. Additionally, operators may be reticent to pursue EOR projects if inactive wells are plugged which could lead to waste of hydrocarbons and failure to protect the correlative rights of the interest owners.

The Commission amends subsection (l)(3) to allow operators of 25-year-old, 10-year inactive wells to perform either a fluid level test once every 12 months or a hydraulic pressure test once every five years, and to obtain the approval of the Commission or its delegate of the test results. The adopted amendments will give operators of these wells the option of conducting less expensive fluid level tests which do not depend on the availability of a workover rig. Moreover, this option is consistent with Texas Natural Resources Code, §89.023.

The Commission adopts the amendments pursuant to Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code, Chapter 89, Subchapter B-1, as enacted by HB 2259, relating to Plugging of Certain Inactive Wells; and Texas Natural Resources Code, §91.101, which gives the Railroad Commission authority to adopt rules and orders governing the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the Commission.

Cross reference to statute: Texas Natural Resources Code, Chapters 81, 89, and 91.

Cross reference to sections affected: Texas Natural Resources Code, §§81.051, 81.052, 89.022, and 91.101.

Issued in Austin, Texas, on July 26, 2011.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 26, 2011.

TRD-201102819

Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: August 15, 2011
Proposal publication date: June 10, 2011
For further information, please call: (512) 475-1295

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 16. COMMERCIAL DRIVER LICENSE

SUBCHAPTER A. LICENSING REQUIREMENTS, QUALIFICATIONS, RESTRICTIONS, AND ENDORSEMENTS

37 TAC §16.13

The Texas Department of Public Safety (the department) adopts amendments to §16.13, concerning Farm-Related Service Industry Waiver, without changes to the proposed text as published in the May 13, 2011, issue of the *Texas Register* (36 TexReg 3071) and will not be republished.

Amendments to this section address Federal Motor Carrier Safety Administration (FMCSA) findings during the 2009 review of the Texas Commercial Driver License (CDL) program. These amendments further align Chapter 16 rules to previously existing statutory requirements governing CDL issuance processes where FMCSA determined the statute and/or rule was not clear enough for enforcement purposes.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §522.005, which authorizes the department to adopt rules necessary to carry out this chapter and the federal act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102893
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: August 21, 2011
Proposal publication date: May 13, 2011
For further information, please call: (512) 424-5848

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SUBCHAPTER D. SANCTIONS AND DISQUALIFICATIONS

37 TAC §16.105

The Texas Department of Public Safety (the department) adopts amendments to §16.105, concerning Special Penalties Pertaining to Violation of Out-of-Service Orders and Railroad Grade Crossing Violations for Drivers and Employers, without changes to the proposed text as published in the May 13, 2011, issue of the *Texas Register* (36 TexReg 3072) and will not be republished.

Amendments to this section address Federal Motor Carrier Safety Administration (FMCSA) findings during the 2009 review of the Texas Commercial Driver License (CDL) program. These amendments further align Chapter 16 rules to previously existing statutory requirements governing CDL issuance processes where FMCSA determined the statute and/or rule was not clear enough for enforcement purposes.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §522.005, which authorizes the department to adopt rules necessary to carry out this chapter and the federal act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102894
D. Phillip Adkins
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Texas Department of Public Safety
Effective date: August 21, 2011
Proposal publication date: May 13, 2011
For further information, please call: (512) 424-5848

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 27. TOLL PROJECTS

SUBCHAPTER A. COMPREHENSIVE DEVELOPMENT AGREEMENTS

43 TAC §27.8

The Texas Department of Transportation (department) adopts amendments to §27.8, concerning Conflict of Interest and Ethics Policies. The amendments to §27.8 are adopted with changes to the proposed text as published in the June 10, 2011, issue of the *Texas Register* (36 TexReg 3589).

EXPLANATION OF ADOPTED AMENDMENTS

Under Transportation Code, §223.209, the Texas Transportation Commission (commission) is required to adopt rules, pro-

cedures, and guidelines governing selection of a developer for a comprehensive development agreement (CDA) and negotiations to promote fairness, obtain private participants in projects, and promote confidence among those participants.

The commission previously adopted §27.8 to prescribe conflict of interest provisions and communications restrictions in order to provide a fair and unbiased CDA procurement process and to ensure high standards of ethics and fairness in the administration of the CDA program. Changes to §27.8 are necessary in order to reduce impacts on competition by ensuring there are a sufficient number of qualified firms available to participate as part of proposer teams, while protecting the integrity and fairness of the CDA program and all procurements carried out by the department as part of the program.

Amendments to §27.8(c)(2) clarify that all provisions in that subsection that apply to a consultant or subconsultant also apply to individual employees of a consultant or subconsultant who participated in the performance of services for the department.

Amendments to §27.8(c)(3) provide that if the department determines that the performance of services by a consulting firm raises a conflict of interest, the resulting prohibition or restriction on that firm as provided in that subsection continues until the date the performance of services ends and all work product prepared by the entity and other information and data provided to the entity in the performance of services is publicly available.

The change in the period in which a conflict of interest applies is generally consistent with the circumstances in which the department may determine a conflict of interest does not exist with respect to certain consultant services under §27.8(c), where the executive director or commission, as appropriate, will consider the extent to which a firm has access to information that could provide a competitive advantage, and whether that information is made available on an equal and timely basis to all proposers for a project. The change will allow additional private entities, under the circumstances described in §27.8(c)(3), to participate in procurements as part of a proposer team. Individual employees of a consultant or subconsultant who performed the services that create a conflict of interest may continue to be subject to a restriction or prohibition.

Amendments to §27.8(c)(6) make conforming changes to paragraph (6) in connection with the deletion of §27.8(c)(9).

Amendments to §27.8(c)(7) authorize a consultant that is actively providing preliminary engineering and architectural services to the department for a CDA project to be a proposer or to participate as an equity owner, team member, consultant, or subconsultant of or to a proposer for the same project, or have a financial interest in any of the foregoing entities with respect to that project, provided all work product prepared by the consultant and other information and data provided to the consultant in the performance of services is made available to all proposers prior to the issuance of the request for proposals for that project. This change will provide more certainty to consultants providing those services and to developers forming proposer teams that the consultant will be able to participate on a proposer team under the conditions described in this paragraph.

Amendments to §27.8(c)(8) authorize a consultant that is actively engaged and performing procurement services or financial services with respect to a CDA project to be a proposer or to participate as an equity owner, team member, consultant, or subconsultant of or to a proposer for a CDA project other than the project for which the consultant is providing procurement or financial services, or to have a financial interest in any of the foregoing entities with respect to a different CDA project, provided the consultant submits a request for a written determination under §27.8(c)(9) that establishes to the Commission's satisfaction that such participation or interest would not constitute a conflict of interest or create the appearance of a conflict of interest, and the consultant institutes ethical walls or other safeguards required by the department. This change allows a consultant, under certain conditions and safeguards necessary to provide a fair and unbiased CDA procurement process, to concurrently provide procurement and financial services to the department and participate on a CDA proposer team.

The amendments delete §27.8(c)(9). Provisions applicable to consultants participating as a proposer or as an equity owner, team member, consultant, or subconsultant of or to a proposer are covered in §27.8(c)(6) and (8).

Amendments to §27.8(c)(13) make conforming changes to this paragraph in connection with the deletion of §27.8(c)(9).

COMMENTS

Comments were received from Glenn Gregory, Vice President, The HNTB Companies (HNTB), Raoul Portillo, Vice President, Jacobs Engineering Group, Inc. (Jacobs), Philip Yerby, Vice President, CH2M Hill, and David Weeks, P.E., URS Corporation (URS).

Comment:

HNTB states they do not take exception to any of the proposed amendments, but have concerns that the proposed amendments do not remove an unnecessary prohibition on consultants performing procurement services or financial services with respect to a CDA project from participating as an equity owner, team member, consultant, or subconsultant of or to a proposer for another CDA project. While they agree a prohibition makes sense for services on the same CDA project, they do not believe that extending the prohibition to unrelated CDA projects provides additional protection for the State of Texas.

HNTB states that concerns that a consultant would gain an unfair advantage on all CDA projects by virtue of working on a single CDA procurement are no longer valid, as the department's policy objectives and selection process are well understood by all interested parties. Procurement documents have been nearly identical, and consultants participating in CDA procurements possess a detailed understanding of the department's policies, evaluation methodology, and approach to CDA financial and business terms. A consultant performing procurement activities in one location does not gain an unfair advantage on proposals for CDA projects regardless of location. Project specific issues and challenges will vary from project to project.

HNTB states that the proposed amendments restrict open competition for CDA procurements by unnecessarily restricting the pool of qualified proposers. The department would receive more competitive proposals if consultants prohibited from joining proposer teams were allowed to do so. Consultants with design-build and CDA experience will be reluctant to respond to requests for proposals to provide procurement services due to the uncertainty imposed on working on other CDA projects in the state. Requests to the executive director for case-by-case exceptions under the current rule increase opportunities for the appearance of arbitrary treatment of consultants, and fail to provide consultants with the certainty needed to assess conflict of inter-

est risks associated with a particular CDA when proposer teams begin forming.

HNTB proposes that §27.8(c)(8) be amended by deleting the phrase "or any other comprehensive development agreement project", and that §27.8(c)(9) be deleted in its entirety.

Response:

The department has made the requested changes, but has amended §27.8(c)(8) to prescribe conditions on a consultant providing procurement or financial services to the department being a proposer or participating as an equity owner, team member, consultant, or subconsultant of or to a proposer for a comprehensive development agreement project other than the project for which the consultant is providing those services.

The commission and the department believe that conditions on a consultant's participation as an equity owner, team member, consultant, or subconsultant of or to a proposer for a CDA project that is not the project for which the consultant is providing procurement or financial services are necessary in order to protect the integrity and fairness of the CDA program and all procurements carried out by the department as part of the program, to avoid circumstances where certain consultants or CDA proposers obtain, or have the appearance of obtaining, an unfair competitive advantage as a result of work performed for the department, and to protect the department's interests and confidential and sensitive information.

One of the primary purposes of the conditions in §27.8(c)(8) is to prevent "insider" knowledge during procurements that could create a potential unfair advantage for a proposer or a potential disadvantage for the department. While the department has used similar procurement documents for each CDA project, consultants participating in CDA procurements have worked on revisions to the procurement documents that will be used on all projects. In addition, "inside information" that could provide a competitive advantage for a proposer or disadvantage for the department is information that is not included in the procurement documents. This includes negotiation strategies and approach to business terms in changing financial markets. All consultants participating in CDA procurements will not possess a full understanding of the department's policies, evaluation methodology, and approach to CDA financial and business terms.

For example, a consultant providing procurement or financial services will be privy to discussions concerning evaluation criteria and points to be assigned to each evaluation criterion, and what is important to evaluators, that other proposers will not be aware of. Moreover, those consultants participate in internal discussions the department has concerning issues that come up at one-on-one meetings with proposers during industry review of the draft request for proposals for a CDA project. Those issues typically are not project specific. A consultant providing procurement or financial services will be aware of the department's sensitivities on those issues and how far the department will be willing to go to compromise on those issues. This understanding of the department's negotiation strategy can be used to the advantage of the consultant and the proposer the consultant is a part of. In addition, discussions during one on one meetings may involve the confidential business strategy of a proposer that is the competitor of the consultant on a different project. Additionally, the department, historically and currently, conducts CDA procurements for multiple projects at the same time. A procurement engineer on a project is tasked to review the confidential alternative technical concepts submitted by proposers for that project. The proposers submitting the alternative technical concepts are potential competitors to the proposer the procurement engineer is a part of. Given the schedule for CDA procurements, it is possible that consultants may be reviewing the alternative technical concepts of their competitors at the same time that they are developing their own alternative technical concepts for a different project.

The department has been able to attract a substantial number of competitive proposals on past CDA projects that were procured under the existing rules. Each procurement has been very competitive. The commission and the department believe that allowing consultants providing procurement and financial services to participate on proposer teams for other projects without appropriate safeguards will result in the perception of a conflict of interest and unfair competitive advantage that itself will reduce competition in CDA procurements, could lead to bid protests and bring into question the integrity of the CDA program. The impact on competition because of the perception that the procurement is unfair is believed to outweigh any possible reduction in the number of competitive CDA proposals or proposals for procurement engineering services that might be received if consultants prohibited from joining proposer teams were allowed to do so.

The amendments to §27.8(c)(8) will provide a mechanism for consultants providing procurement and financial services to participate on a proposer team for a project other than the project the consultant is providing those services. The amendments will provide more certainty to consultants providing those services that the consultant can participate on a proposer team under the conditions described in that paragraph. Requests for case-by-case exceptions under the current rules are reviewed using the criteria prescribed in §27.8(c)(10) (renumbered by this rule as §27.8(c)(9)), which should prevent the arbitrary treatment of consultants. Additionally, that paragraph has been changed to provide that, with regard to a consultant actively engaged and performing procurement services with respect to a comprehensive development agreement, the commission rather than the executive director will make the determination of whether a conflict of interest exists or whether to approve an exception to the applicability of the conflict of interest provisions. Having the determination made by the commission at a public meeting will provide additional protection against the perception of arbitrary treatment of consultants. Associated changes have been made to other provisions of §27.8 to reflect that change made to renumbered §27.8(c)(9).

Comment:

Jacobs states they support the proposed changes to §27.8, but offer a change for consideration by the commission that would enable increased competition on future CDAs and would benefit the department by broadening the availability of firms to participate in the expanded CDA program authorized by the 82nd Legislature. Jacobs proposes that §27.8(c)(8) be amended by deleting the phrase "or any other comprehensive development agreement project".

Response:

The department has made the requested change, but has amended §27.8(c)(8) to prescribe conditions on a consultant providing procurement or financial services to the department being a proposer or participating as an equity owner, team member, consultant, or subconsultant of or to a proposer for a comprehensive development agreement project other than the project for which the consultant is providing those services.

Comment:

CH2M Hill states that the proposed amendments to §27.8(c)(8) will not accomplish the commission's objective to ensure a sufficient number of qualified firms are available to participate as part of proposer teams. CH2M Hill requests that §27.8(c)(8) be amended so that the limitation in that paragraph only applies to those projects the consultant worked on as the procurement engineer.

CH2M Hill states that under the current proposal, the department will eliminate valuable experience from Texas engineering and construction firms that are available to provide services for CDA programs and serve on developer teams, reducing the available experienced talent and resource capacity. The department needs this resource capacity to provide strong competition, competitive pricing, and on-time project delivery for projects identified in SB 1420. The department will eliminate valuable experience from Texas engineering firms to provide services as procurement engineers. The proposed conflict of interest policy is substantially more restrictive than those used in other states and countries where procurement engineers are restricted from serving on developer teams for those projects where the firm provided procurement consulting. The proposed amendments increase and change the restrictions on existing contracts, which precluded work under contracts related to the specific projects managed under the procurement engineering contract.

Response:

The department has made the requested change, but has amended §27.8(c)(8) to prescribe conditions on a consultant providing procurement or financial services to the department being a proposer or participating as an equity owner, team member, consultant, or subconsultant of or to a proposer for a comprehensive development agreement project other than the project for which the consultant is providing those services.

The department has been able to attract a substantial number of competitive proposals on past CDA projects that were procured under the existing rules. Each procurement has been very competitive. The commission and the department believe that allowing consultants providing procurement and financial services to participate on proposer teams for other projects without appropriate safeguards will result in the perception of a conflict of interest and unfair competitive advantage that itself will reduce competition in CDA procurements and bring into question the integrity of the CDA program. The impact on competition because of the perception that the procurement is unfair is believed to outweigh any possible reduction in the number of competitive CDA proposals or proposals for procurement engineering services that might be received if consultants prohibited from joining proposer teams were allowed to do so.

While the conflict of interest policies in §27.8 may be more restrictive than those used in certain other jurisdictions where procurement engineers are restricted from serving on developer teams for those projects where the firm provided procurement consulting, the policies are not as restrictive as those used in some other jurisdictions. Moreover, the commission and the department are not aware of another jurisdiction with a public private partnership (PPP) program as large as that of the department. The department, historically and currently, conducts CDA procurements for multiple projects at the same time. As a result, the conflict of interest policies in §27.8 will necessarily differ from those in other jurisdictions whose PPP program is smaller in size than that of the department. Certain other states that have had concurrent PPP procurements have adopted conflict of interest policies that restrict procurement engineers for one project from serving on developer teams for other projects.

The restrictions in §27.8 apply even if those restrictions differ from those in existing procurement engineering contracts. Those contracts only concern the project for which those services are being provided, not other projects. Moreover, the department could not legally agree to a provision inconsistent with those rules.

Comment:

URS noted with concern that §27.8(c)(8) excludes consultants engaged in performing procurement services from participating in a CDA for that project or any other project. URS recognizes that a project-specific conflict of interest requirement is appropriate, but states that the level of conflict of interest defined in the rules does not exist in other states, which allow consultants to work on both sides with appropriate safeguards. There is no proprietary information that would become available to a firm working on the procurement side, other than the project specific information which is already managed effectively through confidentiality agreements. URS would be pleased to work under individual confidentiality agreements and with appropriate firewalls established between the procurement engineering and other delivery teams.

Response:

The primary purpose of the conditions in §27.8(c)(8) is to prevent "insider" knowledge during procurements that could create a potential advantage for a proposer or a potential disadvantage for the department. While the department has used similar procurement documents for each CDA project, the "inside information" that could provide a competitive advantage for a proposer or disadvantage for the department is information that is not included in the procurement documents. All consultants participating in CDA procurements will not possess a full understanding of the department's policies, evaluation methodology, and approach to CDA financial and business terms. There is sensitive information that is only available to firms working as procurement engineers, and which could provide a competitive advantage for a proposer or disadvantage for the department if disclosed. Because of the sensitivity of this information, the commission and the department are not comfortable relying solely on confidentiality agreements.

While the conflict of interest policies in §27.8 may be more restrictive than those used in certain other jurisdictions where procurement engineers are restricted from serving on developer teams for those projects where the firm provided procurement consulting, the policies are not as restrictive as those used in some other jurisdictions. Moreover, the commission and the department are not aware of another jurisdiction with a PPP program as large as that of the department. The department, historically and currently, conducts CDA procurements for multiple projects at the same time. As a result, the conflict of interest policies in §27.8 would necessarily differ from those in other jurisdictions whose PPP program is smaller in size than that of the department. Certain other states that have had concurrent PPP procurements have adopted conflict of interest policies that restrict procurement engineers for one project from serving on developer teams for other projects.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.209, which requires the commission to adopt rules, procedures, and guidelines governing selection of a developer for a comprehensive development agreement and negotiations to promote fairness, obtain private participants in projects, and promote confidence among those participants.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 223.

§27.8. Conflict of Interest and Ethics Policies.

(a) Purpose. This section prescribes ethical standards of conduct applicable to private entities, including consultants and subconsultants, participating in the department's comprehensive development agreement program. A private entity's failure to comply with these standards of conduct may result in the private entity's preclusion from participation in a project or sanctions being imposed under §27.9 of this subchapter (relating to Sanctions).

(b) Gifts and benefits. A proposer, developer, consultant, or subconsultant participating in the comprehensive development agreement program, or an affiliate of any of those entities, may not offer, give, or agree to give a gift or benefit to a member of the commission or to a department employee whose work for the department includes the performance of procurement services relating to a project under this subchapter, or who participates in the administration of a comprehensive development agreement. Notwithstanding this prohibition, a consultant or subconsultant (unless a member of a proposer or developer team, if authorized under subsection (c) of this section) may:

(1) pay for an ordinary business lunch; and

(2) offer, give, or agree to give a token item that does not exceed an estimated value of $25 (excluding cash, checks, stocks, bonds, or similar items), where the item is distributed generally as a normal means of advertising.

(c) Conflicts of interest.

(1) Purpose. This subsection prescribes department policy on conflicts of interest relating to consultants and subconsultants participating in the comprehensive development agreement program, and thereby:

(A) protects the integrity and fairness of the program and all procurements carried out by the department as part of the program;

(B) avoids circumstances where a consultant, proposer, or developer obtains, or appears to obtain, an unfair competitive advantage as a result of work performed by a consultant or subconsultant;

(C) provides guidance to private entities so they may assess, and make informed business decisions concerning their participation in the program; and

(D) protects the department's interests and confidential and sensitive project-specific and programmatic information.

(2) Applicability. This subsection applies to all comprehensive development agreement projects undertaken by the department. This subsection applies to consultants and subconsultants, and to individual employees of consultants and subconsultants who participated in the performance of services for the department. A reference in this subsection to a consultant or subconsultant also means individual employees of a consultant or subconsultant who participated in the performance of services for the department. To the extent that the department has previously consented in writing to a consultant's or subconsultant's performance of services that are in conflict with this subsection, participation on a proposer team as an equity owner or team member, acting as a consultant or subconsultant to a proposer, or having a financial interest in a proposer or an equity owner or team member of a proposer, this subsection does not modify or alter the prior consent. The foregoing does not prevent, however, the application of this subsection to the consultant or subconsultant for other projects, including taking into account the performance of services on the project for which consent was obtained. This subsection may by extension prohibit or restrict the ability of a proposer to have a consultant or subconsultant participate on the proposer team as an equity owner or team member, act as a consultant or subconsultant to the proposer, or have a financial interest in the proposer or an equity owner or team member of the proposer.

(3) Period in which a conflict of interest applies. If a determination is made under this subsection that the performance of services by a consultant or subconsultant raises a conflict of interest, the resulting prohibition or restriction provided in this subsection continues:

(A) for the private entity until the date the performance of services ends and all work product prepared by the entity and other information and data provided to the entity in the performance of services is publicly available; and

(B) for an individual that is an employee of or was employed by the consultant or subconsultant and who participated in the performance of services for the department:

(i) until five years after the date the performance of services ends for those projects for which the individual was materially involved in providing services to the department; and

(ii) until one year from the date the performance of services ends for projects for which the individual was not materially involved in providing services to the department.

(4) Application to new firm. If a conflict of interest is determined to apply to an individual pursuant to paragraph (3)(B) of this subsection, the conflict of interest and prohibition with respect to the individual will not apply to the individual's new place of employment. If the new employer is otherwise eligible to perform consultant services, the new employer will remain eligible despite the employment of the individual. This paragraph does not apply to an individual employed by an affiliate of its previous employer, and the conflict of interest and prohibition with respect to the individual will apply to such affiliate.

(5) Federal requirements. For federal-aid projects, the department must comply with the Federal Highway Administration's organizational conflict of interest regulations (found in 23 CFR §636.116). The requirements of this subsection do not limit, modify, or otherwise alter the effect of those regulations, and will be applied consistent with those regulations.

(6) General conflict of interest standards. Except as provided in paragraph (7) of this subsection, no consultant providing consultant services to the department with respect to a comprehensive development agreement project may be a proposer or participate as an equity owner, team member, consultant, or subconsultant of or to a proposer for that project, or have a financial interest in any of the foregoing entities with respect to that project. Except as provided in paragraph (8) of this subsection, a consultant performing consultant services for a comprehensive development agreement project will not be prohibited from participating on a different comprehensive development agreement project as a proposer or participating as an equity owner, team member, consultant, or subconsultant of or to a proposer for the differ-

ent project, or having a financial interest in any of the foregoing entities with respect to the different project.

(7) Providing services for the same project. A consultant that is actively providing preliminary engineering and architectural services to the department with respect to a comprehensive development agreement project, or that performed and completed environmental or traffic and revenue services for a comprehensive development agreement project, may be a proposer or participate as an equity owner, team member, consultant, or subconsultant of or to a proposer for the same project, or have a financial interest in any of the foregoing entities with respect to that project, provided:

(A) with respect to a consultant providing preliminary engineering and architectural services, all work product prepared by the consultant and other information and data provided to the consultant in the performance of services is made available to all proposers prior to the issuance of the request for proposals for that project; or

(B) the executive director issues a written determination under paragraph (9) of this subsection that:

(i) the consultant will not, or in the case of the previous performance of consultant services did not, have access to or obtain knowledge of confidential or sensitive information, procedures, policies and processes that could provide an unfair competitive advantage with respect to the procurement for that project;

(ii) the data and information provided to the consultant in the performance of the consultant services is either irrelevant to the procurement for that project or is available on an equal and timely basis to all proposers;

(iii) the work products from the consultant incorporated into or relevant to the procurement for that project are generally available on an equal and timely basis to all proposers;

(iv) with respect to environmental services, a record of decision or finding of no significant impact has been issued for the project; and

(v) with respect to traffic and revenue services, there will be no impact on the project's plan of finance, including the ability to obtain and close funding and potential sources of funding.

(8) Procurement and financial services. A consultant actively engaged and performing procurement services or financial services with respect to a comprehensive development agreement project may not be a proposer or participate as an equity owner, team member, consultant, or subconsultant of or to a proposer for that project, or have a financial interest in any of the foregoing entities with respect to that project. A consultant actively engaged and performing procurement services or financial services with respect to a comprehensive development agreement project may be a proposer or participate as an equity owner, team member, consultant, or subconsultant of or to a proposer for another comprehensive development agreement project, or may have a financial interest in any of the foregoing entities with respect to another comprehensive development agreement project, provided the consultant submits a request for a written determination under paragraph (9) of this subsection that establishes to the commission's satisfaction that such participation or interest would not constitute a conflict of interest or create the appearance of a conflict of interest, and the consultant institutes ethical walls or other safeguards required by the department.

(9) Requests for determinations or exceptions. A consultant, proposer, or developer may submit a request to the executive director for a determination whether participation in a comprehensive development agreement project or the performance of particular services with respect to a comprehensive development agreement project would constitute a conflict of interest, or to request approval of an exception to the applicability of this subsection to those services. A request for approval of an exception may be made if a consultant, proposer, or developer desires to appeal a previous determination that a conflict of interest exists. The executive director will forward a request to the department's Office of General Counsel for analysis and recommendation prior to issuing a decision. In determining whether a conflict of interest exists, or whether to approve an exception, the commission or executive director, as appropriate, shall consider the executive director's recommendation and:

(A) the extent to which the firm or individual employee obtained access to or the ability to gain knowledge of confidential or sensitive information, procedures, policies, and processes concerning the comprehensive development agreement program or a particular project or procurement that could provide an unfair competitive advantage with respect to the procurement or project at issue;

(B) the type of consulting services at issue;

(C) the particular circumstances of each procurement;

(D) the specialized expertise needed by the department and proposers to implement the procurement;

(E) the past, current, or future working relationship between the consultant and the department;

(F) the period of time between the potential conflict situation and the project at issue; and

(G) the potential impact on the procurement and project at issue, including competition.

(10) Multiple services. If a consultant is providing more than one category of consultant services to the department and there are differences in the standards, restrictions, and limitations applicable to those categories, the standards, restrictions, and limitations applicable to a category that are more stringent will be applied.

(11) Participation on proposer or developer team. A consultant participating with respect to a comprehensive development agreement project as a proposer or developer, or as an equity owner, team member, consultant, or subconsultant of or to a proposer or developer, or having a financial interest in any of the foregoing entities, is eligible to provide consultant services (other than procurement services) to the department for another comprehensive development agreement project, provided that, once the consultant is retained to perform consultant services for the department, the restrictions in this subsection shall apply.

(12) Restriction of services and conditions to approvals and exceptions. In instances where a written determination under paragraph (9) of this subsection that a conflict of interest does not exist (including, in particular, where the conditions prescribed in paragraph (7) of this subsection has been met), or grants an exception to the application of this subsection under paragraph (9), the department may still, in its discretion:

(A) restrict the scope of services the consultant or subconsultant may be eligible to perform for the department in order to further the intent and goals of this subsection; and

(B) condition an approval, determination, or exception as the commission or executive director determines appropriate to further the intent and goals of this subsection, including by requiring the consultant, subconsultant, proposer, or developer to execute confidentiality agreements, institute ethical walls, or segregate certain person-

nel from participation in a project or the performance of consultant services.

(13) Provisions are nonexclusive. The provisions in this subsection do not address every situation that may arise in the context of the department's comprehensive development agreement program nor require a particular decision or determination when faced with facts similar to those described in this subsection. The department retains the ultimate and sole discretion to determine on a case-by-case basis whether a conflict of interest exists and what actions may be appropriate to avoid, neutralize, or mitigate any actual or potential conflict, or the appearance of any conflict. The provisions of this subsection shall not be construed to preclude or condone any conduct with regard to projects other than projects under a comprehensive development agreement. The department will continue to evaluate other projects based on its traditional conflict of interest standards.

(d) Rules of contact. In order to provide a fair and unbiased procurement process, a request for qualifications, request for proposals, or request for competing proposals and qualifications will contain rules of contact regulating communications between proposers or any of its team members and the commission, the department, and third parties involved in the procurement. Communication includes face-to-face, telephone, facsimile, electronic-mail (e-mail), or formal written communication. The rules of contact become effective upon the issuance of the request for qualifications, request for proposals, or request for competing proposals and qualifications. The rules of contact will include provisions:

(1) prohibiting a proposer or any of its team members from communicating with another proposer or its team members with regard to the project, request for qualifications, request for proposals, or request for competing proposals and qualifications, or either team's qualifications submittal or proposal;

(2) requiring each proposer to designate one or more representatives responsible for contact with the department, and requiring the proposer to correspond with the department regarding the project, request for qualifications, request for proposals, or request for competing proposals and qualifications only through the department's authorized representatives and the proposer's designated representatives;

(3) prohibiting any ex parte communication regarding the project, request for qualifications, request for proposals, or request for competing proposals and qualifications or the procurement with any member of the commission or with any department staff, advisors, contractors, or consultants involved in the procurement until the earliest of the execution and delivery of the comprehensive development agreement, the rejection of all qualifications submittals or proposals by the department, or the cancellation of the procurement;

(4) permitting communications in exceptional circumstances and designating department personnel authorized to approve such communications, and providing that the restrictions on communications shall not preclude or restrict communications with regard to matters unrelated to the request for qualifications, request for proposals, or request for competing proposals and qualifications, or participation in public meetings of the commission or any public or proposer workshop related to the project, request for qualifications, request for proposals, or request for competing proposals and qualifications;

(5) designating a department employee not involved in the procurement to act as an ombudsman who is authorized to receive confidential communications (including questions, comments, or complaints regarding the procurement) and who, after removing, to the extent practicable, any information identifying the proposer, forwards the communications to the employees designated as the department's authorized representatives; and

(6) authorizing the executive director to disqualify a proposer from the procurement and participation in the project at issue or to impose another sanction under §27.9 of this subchapter if it is determined that a proposer has engaged in any improper communications in violation of the rules of contact.

(e) Exceptions to rules of contact. Notwithstanding subsection (d)(1) of this section:

(1) subcontractors that are shared between two or more proposer teams may communicate with members of each of those teams so long as those proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams; and

(2) the prohibition provided by that subsection does not apply to public discussions regarding the project, request for qualifications, request for proposals, or request for competing proposals and qualifications at any department sponsored informational meetings.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 29, 2011.

TRD-201102864
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: August 18, 2011
Proposal publication date: June 10, 2011
For further information, please call: (512) 463-8683

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Public Utility Commission of Texas

Title 16, Part 2

TRD-201102944
Filed: August 3, 2011

♦ ♦ ♦

Proposed Rule Reviews

Texas State Soil and Water Conservation Board

Title 31, Part 17

The Texas State Soil and Water Conservation Board files this notice of intent to review Title 31, Part 17, Chapter 520, Subchapter B, §§520.11 - 520.13, Requirements to Receive State Funds or Administer State Programs, of the Texas Administrative Code (TAC) in accordance with the Texas Government Code, §2001.039.

As required by §2001.039 of the Texas Government Code, the Agency will accept comments and make a final assessment regarding whether the reason for adopting the rule continues to exist. The comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, by e-mail to risom@tsswcb.state.tx.us, or by facsimile at (254) 773-3311.

TRD-201102936
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: August 2, 2011

♦ ♦ ♦

Adopted Rule Reviews

Texas Alcoholic Beverage Commission

Title 16, Part 3

Pursuant to the notice of proposed rule review published in the May 20, 2011, issue of the *Texas Register* (36 TexReg 3199), the Texas Alcoholic Beverage Commission (commission) has reviewed and considered for readoption, revision, or repeal these sections of Chapter 45, Subchapter C, in accordance with Government Code §2001.039: §45.74, relating to Misbranding; §45.75, relating to Mandatory Label Information for Malt Beverages; §45.76, relating to Brand Names; §45.77, relating to Class and Type; §45.78, relating to Name and Address; §45.79, relating to Alcoholic Content; §45.81, relating to General Requirements for Malt Beverages; §45.83, relating to Label Approval and Release; §45.84, relating to Relabeling; §45.87, relating to Advertisement Defined; and §45.91, relating to Exports.

The commission considered, among other things, whether the reasons for adoption of these sections continue to exist. After its review, the commission finds that the reasons for adopting these sections continue to exist and readopts these sections, without changes, pursuant to the requirements of the Government Code.

No comments were received regarding the readoption of these sections.

This concludes the review of 16 TAC §45.74, relating to Misbranding; §45.75, relating to Mandatory Label Information for Malt Beverages; §45.76, relating to Brand Names; §45.77, relating to Class and Type; §45.78, relating to Name and Address; §45.79, relating to Alcoholic Content; §45.81, relating to General Requirements for Malt Beverages; §45.83, relating to Label Approval and Release; §45.84, relating to Relabeling; §45.87, relating to Advertisement Defined; and §45.91, relating to Exports.

TRD-201102917
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Filed: August 1, 2011

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Office of the Governor, Economic Development and Tourism Division

Title 10, Part 5

The Office of the Governor, Economic Development and Tourism Division (EDT), has completed its review of Texas Administrative Code, Title 10, Part 5. The review was conducted in accordance with the requirements of Texas Government Code, §2001.039.

The notice of review was published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1567). The EDT received no comments regarding the proposed rule review.

After completing the review, the EDT finds that the reasons for adopting the following provisions continue to exist and readopts these provisions without changes pursuant to Texas Government Code, §2001.039: Chapters 175, 176, 177, 180, 181, 183, 187, and 188; Subchapter B of Chapter 182; and §§198.1, 198.2, 198.5, 198.8, 198.9, and 198.12. The EDT has determined that certain changes and revisions are necessary with regard to Chapter 176 and has published its

proposed amendment in the July 15, 2011, issue of the *Texas Register* (36 TexReg 4527). The EDT has also determined that certain changes and revisions are necessary with regard to Chapters 175, 180, 181, 183, and 187, and the portions of Chapters 182 and 198 listed above, and intends to publish its proposed amendment of these provisions in the *Texas Register* at a later date.

In addition, the EDT finds that the reasons for adopting the following provisions do not continue to exist and intends to publish the proposed repeal of these provisions in the *Texas Register* at a later date: Chapters 186 and 197; Subchapter A of Chapter 182; and §§198.3, 198.4, 198.6, 198.7, 198.10, and 198.11.

This concludes the review of Texas Administrative Code, Title 10, Part 5.

TRD-201102865
David Zimmerman
Assistant General Counsel
Office of the Governor, Economic Development and Tourism Division
Filed: July 29, 2011

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Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) has completed its review required by the Texas Government Code §2001.039 of the following chapter of the Texas Administrative Code, Title 28, Part 2: Chapter 166, Workers' Health and Safety--Accident Prevention Services. The reviewed sections in this chapter are subsequently referred to collectively in this Notice of Adopted Review as "the sections."

The notice of proposed rule review was published in the May 6, 2011, issue of the *Texas Register* (36 TexReg 3002). As provided in this notice, the Division reviewed and considered the sections for readoption, revision, or repeal.

The Division considered whether the reasons for adoption of the sections continue to exist.

The Division received comments from one entity that addressed multiple rules within Chapter 166.

General Comment

Commenter states that Chapter 166 should be revised and updated with amendments to §§166.5, 166.6, and 166.7, and also suggests a repeal of §166.4. Commenter suggests that Chapter 166 was adopted as a result of a workers' compensation crisis in 1970's or 1980's, and that the focus on compliance has either produced little or no change in safety services and has been burdensome to system participants. This commenter states that as a consequence of the mandates contained in Chapter 166, insurance carriers are not treated as contract parties by employers, but instead, are treated as surrogate state officials, and that insurance carriers are forced to design a compliance mechanism specifically for Texas. Commenter also states employers may choose non-subscription rather than receive additional services that employers previously refused. This commenter states that these changes would reduce the burden on insurance carriers and improve the provision of accident prevention services.

Agency Response: This rule review process is a periodic administrative agency review of rules and commenter's suggestions are included in the process. The amendment or repeal of rules in Chapter 166 is a policy decision which would require analysis and formal rulemaking, including notice and an opportunity for further stakeholder input. The Division agrees that future amendments to Chapter 166 may be required to update this chapter. Chapter 166, and in specific, §166.4, was amended to include Accident Prevention Services in 1995, and has been amended in 1998 and 2005. These suggestions may have merit and will be retained and used in future analysis and rulemaking efforts under the Government Code.

§166.4. Required Accident Prevention Services and Notification of Return-to-Work Coordination Services.

Commenter states that §166.4 should be repealed because Subchapter E of Chapter 411 of the Labor Code constitutes a comprehensive statutory framework for regulation of accident prevention services, or that §166.4 is unnecessary because Subchapter E of Chapter 411 of the Labor Code already establishes meaningful parameters for the oversight and provision of accident prevention services.

Agency Response: The Division declines to repeal §166.4 because the need for a rule describing the accident prevention facilities and services to be provided to policyholders at no additional cost continues to exist. The repeal of §166.4 is a policy decision which would require analysis and formal rulemaking, including notice and an opportunity for further stakeholder input before any repeal. These suggestions may have merit and will be retained and used in future analysis and rulemaking efforts under the Government Code.

§166.5. Required Periodic Inspections of Accident Prevention Services and Site of Inspection.

Commenter states that §166.5 should be amended to allow for less frequent inspections for insurance carriers performing well during audits, based on Division policy.

Agency Response: The Division agrees that future amendments to §166.5 may be required. The amendment of §166.5 is a policy decision which would require analysis and formal rulemaking, including notice and an opportunity for further stakeholder input before any amendment. These suggestions may have merit and will be retained and used in future analysis and rulemaking efforts under the Government Code.

§166.6. Exchange of Information for the Inspection.

Commenter states that §166.6 should be amended, changing the notice sent by the Division prior to an inspection from 60 days to 90 days before an inspection, as well as suggesting that §166.6(b)(1)(B) should be amended to provide that the insurance carrier provide "evidence of policies and procedures" used to provide policyholders with the required notice and other material. The commenter also suggests that the reference to return-to-work (RTW) coordination services information should be removed in order to clarify the fact that RTW services are delivered through an insurance carrier's claim department, not through loss control departments.

Agency Response: The Division agrees that future amendments to §166.6 may be required. The amendment of §166.6 is a policy decision which would require analysis and formal rulemaking including notice and an opportunity for further stakeholder input before any amendment. These suggestions may have merit and will be retained and used in future analysis and rulemaking efforts under the Government Code.

§166.7. Inspection of Accident Prevention Services: Conducting and Reporting.

This commenter also states that §166.7 should be amended to provide for a finite period for preparation and delivery of the Division's report of inspection to limit the uncertainty faced by insurance carriers who are forced to endure an uncomfortable waiting period.

Agency Response: The Division agrees that future amendments to §166.7 may be required. The amendment of §166.7 is a policy decision which would require analysis and formal rulemaking including notice and an opportunity for further stakeholder input before any amendment. These suggestions may have merit and will be retained and used in future analysis and rulemaking efforts under the Government Code.

The Division has determined that the reasons for adopting the following rules continue to exist and the rules are retained in their present form. Any revisions in the future will be accomplished in accordance with the Administrative Procedure Act.

§166.1. Definitions of Terms.

§166.2. Initial Writing and Resumption of Writing of Workers' Compensation Insurance.

§166.3. Annual Report to the Commission.

§166.4. Required Accident Prevention Services and Notification of Return-to-Work Coordination Services.

§166.5. Required Periodic Inspections of Accident Prevention Services and Site of Inspection.

§166.6. Exchange of Information for the Inspection.

§166.7. Inspection of Accident Prevention Services: Conducting and Reporting.

As a result of the review, the Division has determined that the reason for adoption of the following rules does not continue to exist due to the repeal of Labor Code §411.062 by House Bill 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005 and therefore these rules are not readopted. These rules will be repealed at a later date in accordance with the Administrative Procedure Act.

§166.8. Qualification of Field Safety Representatives.

§166.9. Approval of Occupational Health and Safety Education Programs.

This concludes the Division's review of Chapter 166. The completion of the review of this chapter concludes the rule review process.

TRD-201102950
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: August 3, 2011

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Texas Board of Nursing

Title 22, Part 11

The Texas Board of Nursing (Board) filed a notice of intent to review and consider for readoption, revision, or repeal 22 Texas Administrative Code Chapter 211, relating to General Provisions. The Notice of Intent to Review was published in the June 24, 2011, issue of the *Texas Register* (36 TexReg 3939).

The Government Code §2001.039 requires each state agency to review its rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules in Chapter 211 were scheduled for this four-year review. No comments were received concerning the Board's proposed rule review.

The Board has completed its review of the rules in Chapter 211 and has determined that the reasons for originally adopting these rules continue to exist. The rules were also reviewed to determine whether they were obsolete, whether they reflected current legal and policy considerations and current procedures and practices of the Board, and whether they were in compliance with the Government Code Chapter 2001 (Administrative Procedure Act).

The Board readopts the rules in Chapter 211 without changes, pursuant to the Government Code §2001.039 and the Occupations Code §301.151, which authorizes the Board to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. This concludes the rule review of Chapter 211 under the implementation of the Board's rule review plan for 2011-2013 that is published on the Secretary of State's website.

TRD-201102852
Lance Brenton
Assistant General Counsel
Texas Board of Nursing
Filed: July 28, 2011

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The Texas Board of Nursing (Board) filed a notice of intent to review and consider for readoption, revision, or repeal 22 Texas Administrative Code Chapter 217, relating to Licensure, Peer Assistance and Practice. The Notice of Intent to Review was published in the June 24, 2011, issue of the *Texas Register* (36 TexReg 3939).

The Government Code §2001.039 requires each state agency to review its rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules in Chapter 217 were scheduled for this four-year review. No comments were received concerning the Board's proposed rule review.

The Board has completed its review of the rules in Chapter 217 and has determined that the reasons for originally adopting these rules continue to exist. The rules were also reviewed to determine whether they were obsolete, whether they reflected current legal and policy considerations and current procedures and practices of the Board, and whether they were in compliance with the Government Code Chapter 2001 (Administrative Procedure Act).

The Board readopts the rules in Chapter 217 without changes, pursuant to the Government Code §2001.039 and the Occupations Code §301.151, which authorizes the Board to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. This concludes the rule review of Chapter 217 under the implementation of the Board's rule review plan for 2011-2013 that is published on the Secretary of State's website.

TRD-201102853
Lance Brenton
Assistant General Counsel
Texas Board of Nursing
Filed: July 28, 2011

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The Texas Board of Nursing (Board) filed a notice of intent to review and consider for readoption, revision, or repeal 22 Texas Administrative Code Chapter 219, relating to Advanced Practice Nurse Education. The Notice of Intent to Review was published in the June 24, 2011, issue of the *Texas Register* (36 TexReg 3939).

The Government Code §2001.039 requires each state agency to review its rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules in Chapter 219 were scheduled for this four-year review. No comments were received concerning the Board's proposed rule review.

The Board has completed its review of the rules in Chapter 219 and has determined that the reasons for originally adopting these rules continue to exist. The rules were also reviewed to determine whether they were obsolete, whether they reflected current legal and policy considerations and current procedures and practices of the Board, and whether they were in compliance with the Government Code Chapter 2001 (Administrative Procedure Act).

The Board readopts the rules in Chapter 219 without changes, pursuant to the Government Code §2001.039 and the Occupations Code §301.151, which authorizes the Board to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. This concludes the rule review of Chapter 219 under the implementation of the Board's rule review plan for 2011-2013 that is published on the Secretary of State's website.

TRD-201102854
Lance Brenton
Assistant General Counsel
Texas Board of Nursing
Filed: July 28, 2011

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The Texas Board of Nursing (Board) filed a notice of intent to review and consider for readoption, revision, or repeal 22 Texas Administrative Code Chapter 223, relating to Fees. The Notice of Intent to Review was published in the June 24, 2011, issue of the *Texas Register* (36 TexReg 3939).

The Government Code §2001.039 requires each state agency to review its rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules in Chapter 223 were scheduled for this four-year review. No comments were received concerning the Board's proposed rule review.

The Board has completed its review of the rules in Chapter 223 and has determined that the reasons for originally adopting these rules continue to exist. The rules were also reviewed to determine whether they were obsolete, whether they reflected current legal and policy considerations and current procedures and practices of the Board, and whether they were in compliance with the Government Code Chapter 2001 (Administrative Procedure Act).

The Board re-adopts the rules in Chapter 223 without changes, pursuant to the Government Code §2001.039 and the Occupations Code §301.151, which authorizes the Board to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. This concludes the rule review of Chapter 223 under the implementation of the Board's rule review plan for 2011-2013 that is published on the Secretary of State's website.

TRD-201102855
Lance Brenton
Assistant General Counsel
Texas Board of Nursing
Filed: July 28, 2011

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State Securities Board

Title 7, Part 7

Pursuant to the notice of proposed rule review published in the June 3, 2011, issue of the *Texas Register* (36 TexReg 3511), the State Securities Board (Board) has reviewed and considered for readoption, revision, or repeal all sections of the following chapters of Title 7, Part 7, of the Texas Administrative Code, in accordance with Texas Government Code, §2001.039: Chapter 107, Terminology; Chapter 127, Miscellaneous; and Chapter 131, Guidelines for Confidentiality of Information.

The Board considered, among other things, whether the reasons for adoption of these rules continue to exist. After its review, the Board finds that the reasons for adopting these rules continue to exist and readopts these chapters, without changes, pursuant to the requirements of the Government Code.

As part of the review process, the Board has proposed to amend §131.1. Notice of the proposed amendment was published in the "Proposed Rules" section of the June 17, 2011, issue of the *Texas Register,* in accordance with the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

No comments were received regarding the readoptions of Chapters 107, 127, and 131.

This concludes the review of 7 TAC Chapters 107, 127, and 131.

TRD-201102891
Benette L. Zivley
Securities Commissioner
State Securities Board
Filed: August 1, 2011

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §577.15

(a) **EXAMINATIONS**	**FEE**
Texas State Board Licensing Exam (SBE)	$355
Special License Exam	$355
Equine Dental Provider Exam	$100

(b) **APPLICATION PROCESSING**	
Special and Regular License (except for Provisional License)	$200
Equine Dental Provider	$100

(c) **RENEWALS**	**BOARD FEE**	**PROF. FEE**	**TOTAL FEE**
License Renewal (current)	$176	$200	$376
Delinquent Renewals (90 days or less)	$264	$200	$464
Delinquent Renewals (over 90 days but less than one year)	$352	$200	$552
Inactive Renewals	$176	$0	$176
Delinquent Inactive Renewal (90 days or less)	$264	$0	$264
Delinquent Inactive Renewals (over 90 days but less than one year)	$352	$0	$352
Special License	$171	$200	$371
Delinquent Special License Renewals (90 days or less)	$257	$200	$457
Delinquent Special License Renewals (over 90 days but less than one year)	$342	$200	$542
Equine Dental Provider	$200	$0	$200
(d) **PROVISIONAL LICENSE**	$405	$0	$405
(e) **TEMPORARY LICENSE**	$300	$0	$300
(f) Criminal History Evaluation Letter	$32	$0	$32

(g) **OPEN RECORDS**

Charges for all open records and other goods/services such as tapes, disks, will be in accordance with the Office of the Attorney General 1 TAC §§70.1 - 70.11 (relating to Cost of Copies of Public Information)

(h) **RETURNED CHECK FEE**	$25

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 15, 2011, through June 23, 2011. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Coastal Coordination Council website. The notice was published on the website on August 3, 2011. The public comment period for this project will close at 5:00 p.m. on September 2, 2011.

FEDERAL AGENCY ACTIONS:

Applicant: City of South Padre Island; Location: The project is located within Tompkins Channel which is eastward from the Gulf Intracoastal Waterway, just north of and parallel to Queen Isabella Memorial Causeway, and then northerly parallel to the western shore of South Padre Island, in Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Isabel, Texas. Approximate Latitude: 26.090325 North; Longitude: -97.172265 West. Project Description: The applicant proposes to mechanically dredge selected locations along the 5-mile-long Tompkins Channel. The multiple selected locations amount to 532,000 square feet of area, with 11,000 cubic yards of silt and sand to be dredged in order to restore the previously authorized 6-foot depth of the Tompkins Channel. The dredged material will be placed on a barge. The dredged material will then be transported and placed at Sea Horse Harbor, an upland site, located at the west end of Marisol Street on South Padre Island. The dredging is needed due to siltation resulting from Hurricane Dolly of 2008. CMP Project No.: 11-0433-F1. Type of Application: U.S.A.C.E. permit application #SWG-1996-00026 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: TMGSJB Properties, LP; Location: The project is located off the Laguna Madre, at Lot 1A thru 11, Block IB, on West Tarpon Avenue within the Modern Venice Subdivision, in Port Isabel, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Isabel, Texas. Approximate Latitude: 26.077483 North; Longitude: -97.220020 West. Project Description: The applicant proposes to construct a 750-foot bulkhead and to place 5,800 cubic yards of backfill to raise the submerged area which was eroded by wave action. The fill would be placed on 0.56 acres of jurisdictional tidal waters. The bulkheaded and filled lots will then be used for residential development. The applicant stated that they will mitigate for the proposed impacts by creating hard substrate habitat through the placement of bands of clean riprap within a 500-square-foot area on property located offsite. The oysters present at the project location site will be relocated to the proposed mitigation site. CMP Project No.: 11-0434-F1. Type of Application: U.S.A.C.E. permit application #SWG-1995-02222 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Kate Zultner, Consistency Review Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or via email at kate.zultner@glo.texas.gov. Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201102920
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: August 1, 2011

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/08/11 - 08/14/11 is 18% for Consumer[1] /Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/08/11 - 08/14/11 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201102929
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 2, 2011

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code

(TWC) §7.075. TWC §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is September 12, 2011. TWC §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on September 12, 2011. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: Alfredo Plascencia; DOCKET NUMBER: 2011-0575-MLM-E; IDENTIFIER: RN105735179; LOCATION: Refugio, Refugio County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; and 30 TAC §111.201 and Texas Health and Safety Code (THSC), §382.085(b), by failing to prohibit the burning of MSW for the purpose of disposal; PENALTY: $1,972; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(2) COMPANY: B. C. Spraberry Farming and Ranching, Ltd.; DOCKET NUMBER: 2011-1004-WR-E; IDENTIFIER: RN106128002; LOCATION: Anson, Jones County; TYPE OF FACILITY: agriculture property; RULE VIOLATED: TWC §11.121 and 30 TAC §297.11, by failing to obtain proper authorization prior to appropriation of state water; PENALTY: $750; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: BELTWAY STORES INCORPORATED dba Beltway Stop; DOCKET NUMBER: 2011-0905-PST-E; IDENTIFIER: RN101799112; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the underground storage tanks; PENALTY: $1,757; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: BP Products North America Incorporated; DOCKET NUMBER: 2011-0615-IWD-E; IDENTIFIER: RN102535077; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: petroleum refinery with associated wastewater treatment; RULE VIOLATED: TWC §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0000443000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Number 007, by failing to comply with the permitted effluent limits for total residual chlorine; PENALTY: $15,225; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Circle T Promotions, Ltd.; DOCKET NUMBER: 2011-0811-MWD-E; IDENTIFIER: RN104812482; LOCATION: Hamilton County; TYPE OF FACILITY: domestic wastewater system; RULE VIOLATED: TWC §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0014678001, Effluent Limitations and Monitoring Requirements Number 2, by failing to comply with permitted effluent limits; PENALTY: $5,680; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: City of Caldwell; DOCKET NUMBER: 2011-0929-MWD-E; IDENTIFIER: RN101721439; LOCATION: Burleson County; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: TWC §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0010813001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; and 30 TAC §305.125(17) and §319.1, and TPDES Permit Number WQ0010813001, Monitoring and Reporting Requirements Number 1, by failing to include the daily maximum flow data in the discharge monitoring report submitted for the monitoring period ending November 30, 2010; PENALTY: $1,242; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(7) COMPANY: City of Menard; DOCKET NUMBER: 2011-0708-PWS-E; IDENTIFIER: RN101214070; LOCATION: Menard, Menard County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(c)(1), by failing to provide minimum treatment consisting of coagulation with direct filtration for water under the influence of surface water; 30 TAC §290.46(s)(2)(B)(iv), by failing to check the calibration of the on-line turbidimeters at least once each week using a primary standard, a secondary standard, or the manufacturer's proprietary calibration confirmation device or by comparing the results from the on-line unit with the results from a properly calibrated benchtop unit; 30 TAC §290.46(s), by failing to provide accurate testing equipment for monitoring the effectiveness of any chemical treatment process used by the system; and 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan; PENALTY: $767; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(8) COMPANY: City of Pearland; DOCKET NUMBER: 2011-0585-MWD-E; IDENTIFIER: RN101613446; LOCATION: Brazoria County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0010134002, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $8,700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Eusebio Torres dba RAPIDO REDI-MIX INCORPORATED; DOCKET NUMBER: 2011-0728-IWD-E; IDENTIFIER: RN104336276; LOCATION: Houston, Harris County; TYPE OF

FACILITY: ready-mixed concrete; RULE VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d) and TPDES General Permit Number TXG110881, Part IV, Number 7(f), by failing to timely submit monitoring results at the intervals specified in the permit; PENALTY: $1,400; ENFORCEMENT COORDINATOR: Marty Hott, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Fall Creek Utility Company, Incorporated; DOCKET NUMBER: 2011-0525-MWD-E; IDENTIFIER: RN101609766; LOCATION: Hood County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0013809001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limits; and 30 TAC §305.125(17) and TPDES Permit Number WQ0013809001, Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2010; PENALTY: $8,960; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Hidalgo County; DOCKET NUMBER: 2011-0622-AIR-E; IDENTIFIER: RN105335459; LOCATION: Mercedes, Hidalgo County; TYPE OF FACILITY: air curtain incinerator; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(1), General Operating Permit (GOP) Number O3278, Air Curtain Incinerator GOP Number 518, Terms and Conditions (b)(3)(D)(i) and THSC (THSC), §382.085(b), by failing to certify compliance with the terms and conditions of the permit for each 12-month period following permit issuance; 30 TAC §122.143(4) and §106.496(h)(4)(D), GOP Number O3278, Air Curtain Incinerator GOP Number 518, Terms and Conditions (b)(9)(D) and THSC §382.085(b), by failing to clearly and permanently mark the air curtain incinerator with the regulated entity or account identification number on the fan manifold or aboveground unit; and 30 TAC §122.143(4) and §122.145(2)(B), GOP Number O3278, Air Curtain Incinerator GOP Number 518, Terms and Conditions (b)(3)(C)(ii)(b) and THSC §382.085(b), by failing to submit a deviation report for each six-month period after permit issuance in which a deviation occurred; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(12) COMPANY: Jackie Behrens; DOCKET NUMBER: 2011-1247-OSI-E; IDENTIFIER: RN106144991; LOCATION: Brady, McCulloch County; TYPE OF FACILITY: occupational licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(13) COMPANY: Johnny Binford dba Your C Store; DOCKET NUMBER: 2011-0677-PST-E; IDENTIFIER: RN101491421; LOCATION: LaGrange, Fayette County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(14) COMPANY: Kevin Fry and Kenneth Fry dba ATCHLEY LUMBER AND SUPPLY, INCORPORATED; DOCKET NUMBER: 2011-0627-WQ-E; IDENTIFIER: RN102293677; LOCATION: Trinity, Trinity County; TYPE OF FACILITY: sawmill; RULE VIOLATED: TWC §26.121(a)(1), 30 TAC §305.125(1), and TPDES General Permit Number TXR05Y541, Part II, Section B.5, Discharges of Storm Water Mixed with Non-Storm Water, by failing to prevent the unauthorized discharge of process water into or adjacent to any water in the state; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Marty Hott, (512) 239-2587; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: MICA CORPORATION; DOCKET NUMBER: 2011-0848-PST-E; IDENTIFIER: RN102990512; LOCATION: Haltom City, Tarrant County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the UST; PENALTY: $2,629; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Midwest Engine, Incorporated; DOCKET NUMBER: 2011-0842-AIR-E; IDENTIFIER: RN101548287; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: engine parts salvage and scrap metal; RULE VIOLATED: 30 TAC §116.110(a) and THSC §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operation; PENALTY: $3,150; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Mike Oda d/b/a Riverbend RV Park and Resort; DOCKET NUMBER: 2011-0544-MWD-E; IDENTIFIER: RN103016234; LOCATION: Richmond, Fort Bend County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §317.7(e), by failing to enclose the wastewater treatment plant with an intruder-resistant fence; 30 TAC §319.6 and §319.9(a) and (d), by failing to measure flow and perform quality controls as required; 30 TAC §305.125(5), and TPDES Permit Number WQ0014319001, Operational Requirements Number 1, by failing to properly operate and maintain the facility and all of its systems of collection, treatment, and disposal; TWC §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0014319001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (17) and §319.1 and TPDES Permit Number WQ0014319001, Sludge Provisions and Monitoring and Reporting Requirements Number 1, by failing to timely submit annual sludge reports and a discharge monitoring report; PENALTY: $12,575; ENFORCEMENT COORDINATOR: Thomas Jecha, P.G., (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Prairiland Independent School District; DOCKET NUMBER: 2011-0867-MWD-E; IDENTIFIER: RN104011648; LOCATION: Lamar County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(17) and §319.7(d), and TPDES Permit Number WQ0014473001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at intervals specified in the permit; and 30 TAC §305.125(17), and TPDES Permit Number WQ0014473001, Sludge Provisions, by failing to timely submit the annual sludge report; PENALTY: $500; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(19) COMPANY: Robert W. Pixley; DOCKET NUMBER: 2011-1243-OSI-E; IDENTIFIER: RN103223178; LOCATION: Livingston, Polk County; TYPE OF FACILITY: utility service; RULE VIOLATED: 30 TAC §285.61(4), by failing to ensure that an authorization to construct

has been issued prior to beginning construction of an on-site sewage facility; PENALTY: $175; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: Ronnie West dba R and D Dairy; DOCKET NUMBER: 2011-0740-AGR-E; IDENTIFIER: RN104411087; LOCATION: Godley, Johnson County; TYPE OF FACILITY: concentrated animal feeding operation; RULE VIOLATED: TPDES General Permit Number TXG920815, Part III.A.11(c)(1) and 13(a)(1) and 30 TAC §321.40(k)(2), by failing to land apply any manure, sludge, or wastewater to the land management unit (LMU) in accordance with a detailed nutrient utilization plan when results of the annual soil analysis for extractable phosphorus indicated a level greater than 200 parts per million in Zone 1 for a particular LMU; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: STRASBURGER ENTERPRISES, INCORPORATED dba Quix 631; DOCKET NUMBER: 2011-0746-PST-E; IDENTIFIER: RN102409653; LOCATION: Austin, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a) and TWC §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Brianna Carlson, (361) 825-3420; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(22) COMPANY: Texas Concrete Enterprise, L.L.C.; DOCKET NUMBER: 2011-0207-IWD-E; IDENTIFIER: RN102984374; LOCATION: Houston, Harris County; TYPE OF FACILITY: ready mix concrete; RULE VIOLATED: 30 TAC §305.125(17) and TPDES General Permit Number TXG110721, Part IV, Standard Permit Conditions Number 7(f), by failing to submit monitoring results at intervals specified in the permit; PENALTY: $2,940; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: TOTAL Petrochemicals USA, Incorporated; DOCKET NUMBER: 2011-0830-AIR-E; IDENTIFIER: RN100212109; LOCATION: Harris County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 21538, Special Conditions 1, Federal Operating Permit Number O1293, Special Terms and Conditions 1.A. and 11, and THSC §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: VILLAGE FARMS, L.P.; DOCKET NUMBER: 2011-0686-PWS-E; IDENTIFIER: RN100818087 and RN100817873; LOCATION: Presidio County; TYPE OF FACILITY: public water supplies; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification of the failure to collect routine samples; PENALTY: $4,807; Supplemental Environmental Project offset amount of $2,403 applied to the Trans-Pecos Water and Land Trust, Trans-Pecos Water Rights Acquisition Project; ENFORCEMENT COORDINATOR: Andrea Byington, (512) 239-2579; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(25) COMPANY: WALLACH CONCRETE, INCORPORATED; DOCKET NUMBER: 2011-0618-IWD-E; IDENTIFIER: RN104452560; LOCATION: Andrews, Andrews County; TYPE OF FACILITY: ready-mix concrete production; RULE VIOLATED: 30 TAC §305.125(17) and §319.7(d) and TPDES General Permit Number TXG110594, Part IV.7.(f), by failing to timely submit discharge monitoring reports for Outfall Numbers 001 and 002 for the monitoring periods ending January 31, 2010 - December 31, 2010 and by failing to submit the annual metals report and the annual toxicity report for the monitoring period ending February 28, 2011 for Outfall Numbers 001 and 002; PENALTY: $3,360; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (432) 570-1359.

TRD-201102930
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 2, 2011

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Enforcement Orders

An order was entered regarding Advantage Asphalt Products Ltd., Docket No. 2007-0768-AIR-E on July 22, 2011 assessing $46,221 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Petroleum Wholesale, L.P. dba Sunmart 363, Docket No. 2008-1170-MLM-E on July 22, 2011 assessing $64,151 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Gary Lee Corpian and Marilu Lee Corpain, Docket No. 2009-1720-PST-E on July 22, 2011 assessing $2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-0654, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Strawn, Docket No. 2009-1994-MWD-E on July 22, 2011 assessing $18,980 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ascend Performance Materials, LLC, Docket No. 2009-1997-AIR-E on July 22, 2011 assessing $65,564 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Magic Valley Concrete LLC, Docket No. 2009-2072-WQ-E on July 22, 2011 assessing $9,894 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding David Higginbotham and Katha Higginbotham, Docket No. 2010-0157-PST-E on July 22, 2011 assessing $2,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy Mitchell, Staff Attorney at (512) 239-0736, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Petroleum, L.L.C. dba Shell Petroleum, Docket No. 2010-0260-PST-E on July 22, 2011 assessing $14,529 in administrative penalties with $9,990 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Evergreen Enterprises, Inc. dba Escarpment Exxon, Docket No. 2010-0478-MLM-E on July 22, 2011 assessing $11,356 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mark P. Choate, Docket No. 2010-0526-LII-E on July 22, 2011 assessing $18,105 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Petroleum Wholesale, L.P. dba Sunmart 363, Docket No. 2010-0615-PST-E on July 22, 2011 assessing $5,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, P.G., Staff Attorney at (512) 2393400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Arcola, Docket No. 2010-0710-MWD-E on July 22, 2011 assessing $29,040 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding George Naddour dba Classic Station Shopping Center and Sonia Naddour dba Classic Station Shopping Center, Docket No. 2010-0715-PWS-E on July 22, 2011 assessing $5,867 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Almeda Med Center, Inc. dba Anatolian Trading, Inc. dba Medical Center Shell, Docket No. 2010-0733-PST-E on July 22, 2011 assessing $15,076 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jose Pena, Docket No. 2010-0788-LII-E on July 22, 2011 assessing $250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Daniel Garcia and Julia Garcia, Docket No. 2010-0862-MSW-E on July 22, 2011 assessing $3,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding STR VENTURES, Inc. dba Ella Food Mart, Docket No. 2010-0911-PST-E on July 22, 2011 assessing $23,730 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rene Coumans dba Belle Vue Dairy, Docket No. 2010-0913-AGR-E on July 22, 2011 assessing $4,730 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mathis, Docket No. 2010-1043-MLM-E on July 22, 2011 assessing $9,980 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Murvaul Water Supply Corporation, Docket No. 2010-1054-PWS-E on July 22, 2011 assessing $605 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding ANS Fina Business Enterprises Inc. dba ANS Fina, Docket No. 2010-1128-PST-E on July 22, 2011 assessing $13,653 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Henry M. Garza dba Cielo Azul Ranch, Docket No. 2010-1171-PWS-E on July 22, 2011 assessing $348 in administrative penalties with $69 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding The Anglers Lodge, LLC, Docket No. 2010-1232-PWS-E on July 22, 2011 assessing $15,052 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Gerald S. Smallwood dba Highway 117 Water Supply Corporation, Docket No. 2010-1273-PWS-E on July 22, 2011 assessing $18,422 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOTAL PETROCHEMICALS USA, INC., Docket No. 2010-1300-AIR-E on July 22, 2011 assessing $213,972 in administrative penalties with $42,794 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ameer Ali Jasani, Docket No. 2010-1309-PST-E on July 22, 2011 assessing $22,225 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, P.G., Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Edwin Davis, Docket No. 2010-1327-PST-E on July 22, 2011 assessing $3,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Johns Manville, Docket No. 2010-1352-IHW-E on July 22, 2011 assessing $8,911 in administrative penalties with $1,782 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Hagood, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Felipe Posada dba Key Road Subdivision Water Supply, Docket No. 2010-1586-PWS-E on July 22, 2011 assessing $88,933 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Western States Realty LLC, Docket No. 2010-1699-MSW-E on July 22, 2011 assessing $32,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AB Grocery, Inc., Docket No. 2010-1708-PST-E on July 22, 2011 assessing $6,252 in administrative penalties with $1,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Wills Point, Docket No. 2010-1721-MLM-E on July 22, 2011 assessing $14,606 in administrative penalties with $2,921 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Seventeen Lakes Homeowners Association, Inc., Docket No. 20101733WRE on July 22, 2011 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BEAU RAY, INC. dba GREENLAND SQUARE SUBDIVISION WATER SYSTEM, Docket No. 2010-1736-UTL-E on July 22, 2011 assessing $428 in administrative penalties with $85 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Krebs Utilities, Inc. dba Estates Water Corp., Docket No. 2010-1752-UTL-E on July 22, 2011 assessing $436 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Krebs Utilities, Inc. dba K Lake Terrace, Docket No. 2010-1753-UTL-E on July 22, 2011 assessing $452 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jose Eduardo Coronado, Docket No. 2010-1819-LII-E on July 22, 2011 assessing $996 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Krebs Utilities, Inc. dba Roving Meadows Water System, Docket No. 2010-1835-UTL-E on July 22, 2011 assessing $508 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FORMOSA UTILITY VENTURE, LTD. and Formosa Plastics Corporation, Texas, Docket No. 2010-1903-IWD-E on July 22, 2011 assessing $68,600 in administrative penalties with $13,720 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of East Tawakoni, Docket No. 2010-1922-PWS-E on July 22, 2011 assessing $2,600 in administrative penalties with $520 deferred.

Information concerning any aspect of this order may be obtained by contacting Kelly Wisian, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cranfills Gap, Docket No. 2010-1923-MWD-E on July 22, 2011 assessing $10,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical LLC, Docket No. 2010-1929-AIR-E on July 22, 2011 assessing $20,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Todd Huddleson, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Congress Materials LLC, Docket No. 2010-1930-AIR-E on July 22, 2011 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Todd Huddleson, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MEHAK & HARIS LLC dba Lucky 7 Bear & Wine, Docket No. 2010-1962-PST-E on July 22, 2011 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Patriot Resources, Inc., Docket No. 2010-1968-AIR-E on July 22, 2011 assessing $60,000 in administrative penalties with $12,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Allison Fischer, Enforcement Coordinator at (512) 239-2574, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2010-1975-AIR-E on July 22, 2011 assessing $6,550 in administrative penalties with $1,310 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Leander, Docket No. 2010-1978-WQ-E on July 22, 2011 assessing $1,050 in administrative penalties with $210 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Francisco Velasquez, Docket No. 2010-1986-MSW-E on July 22, 2011 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Cara Windle, Enforcement Coordinator at (512) 239-2581, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southern Union Pipeline, Ltd., Docket No. 2010-1992-AIR-E on July 22, 2011 assessing $7,250 in administrative penalties with $1,450 deferred.

Information concerning any aspect of this order may be obtained by contacting Gena Hawkins, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HONEY HOLDING I, LTD., Docket No. 2010-1995-IWD-E on July 22, 2011 assessing $3,210 in administrative penalties with $642 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mirando City Water Supply Corporation, Docket No. 2010-1998-MWD-E on July 22, 2011 assessing $6,500 in administrative penalties with $1,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FOUR HAYS, INC. dba Burleson Car Wash and Oil Change, Docket No. 2010-2007-PST-E on July 22, 2011 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Albany, Docket No. 2010-2012-MWD-E on July 22, 2011 assessing $1,120 in administrative penalties with $224 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Military Highway Water Supply Corporation, Docket No. 2010-2019-MWD-E on July 22, 2011 assessing $1,255 in administrative penalties with $251 deferred.

Information concerning any aspect of this order may be obtained by contacting Marty Hott, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LyondellBasell Acetyls, LLC, Docket No. 2010-2025-AIR-E on July 22, 2011 assessing $17,175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Houston Refining L.P., Docket No. 2010-2029-AIR-E on July 22, 2011 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Allison Fischer, Enforcement Coordinator at (512) 239-2574, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Orange County Container Group LLC, Docket No. 2010-2030-AIR-E on July 22, 2011 assessing $9,046 in administrative penalties with $1,809 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mujahid Nasir dba Terrys Food Mart 2, Docket No. 2010-2055-PST-E on July 22, 2011 assessing $1,925 in administrative penalties with $385 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Prairie Grove Water Supply Corporation, Docket No. 2010-2059-PWS-E on July 22, 2011 assessing $532 in administrative penalties with $106 deferred.

Information concerning any aspect of this order may be obtained by contacting Kelly Wisian, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Linde Gas North America LLC, Docket No. 2010-2061-IWD-E on July 22, 2011 assessing $11,118 in administrative penalties with $2,223 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NORTH ATLANTIC TRADING, INC. dba Beer Barn, Docket No. 2010-2062-PST-E on July 22, 2011 assessing $2,354 in administrative penalties with $470 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SV-ONA Lakeline Land Limited Partnership, Docket No. 2010-2064-EAQ-E on July 22, 2011 assessing $3,600 in administrative penalties with $720 deferred.

Information concerning any aspect of this order may be obtained by contacting Marty Hott, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Moore Water Supply Corporation, Docket No. 2010-2070-PWS-E on July 22, 2011 assessing $892 in administrative penalties with $178 deferred.

Information concerning any aspect of this order may be obtained by contacting Kelly Wisian, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Chemical LP, Docket No. 2010-2072-AIR-E on July 22, 2011 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3420, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COMPASS DEVELOPMENT AND CONSTRUCTION, INC., Docket No. 2010-2076-WQ-E on July 22, 2011 assessing $800 in administrative penalties with $160 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Traveling Tiger Centers LLC, Docket No. 2010-2083-PWS-E on July 22, 2011 assessing $2,112 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Barbara A. Graves dba Quick Stop, Docket No. 2011-0008-PWS-E on July 22, 2011 assessing $1,177 in administrative penalties with $235 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GOOD UNITED BUSINESS, INC. dba Walter's Food Mart, Docket No. 2011-0017-PST-E on July 22, 2011 assessing $5,100 in administrative penalties with $1,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NEW EVEREST GROUP CORPORATION dba Lil's General Food Store, Docket No. 2011-0022-PST-E on July 22, 2011 assessing $2,750 in administrative penalties with $550 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tien Dao dba Quality Cleaners, Docket No. 2011-0029-DCL-E on July 22, 2011 assessing $6,410 in administrative penalties with $1,282 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lanxess Corporation, Docket No. 2011-0038-AIR-E on July 22, 2011 assessing $8,260 in administrative penalties with $1,652 deferred.

Information concerning any aspect of this order may be obtained by contacting Gena Hawkins, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Big Lake, Docket No. 2011-0048-MSW-E on July 22, 2011 assessing $3,937 in administrative penalties with $787 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding D & D CONTRACTORS, INC., Docket No. 2011-0055-MLM-E on July 22, 2011 assessing $5,475 in administrative penalties with $1,095 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding L C Wholesale Pallet, LLC, Docket No. 2011-0058-WQ-E on July 22, 2011 assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lightwater Hospitality No. 1, Ltd. and Nillians Investments, LLC, Docket No. 2011-0061-MLM-E on July 22, 2011 assessing $4,350 in administrative penalties with $870 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J.O. Haney, Jr., Patricia A. Haney, and Fazzone Construction Co., Inc., Docket No. 2011-0067-EAQ-E on July 22, 2011 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Marty Hott, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FAMCOR OIL, INC., Docket No. 2011-0068-AIR-E on July 22, 2011 assessing $30,000 in administrative penalties with $6,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, P.G., Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sabina Petrochemicals LLC, Docket No. 2011-0073-AIR-E on July 22, 2011 assessing $44,000 in administrative penalties with $8,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Allison Fischer, Enforcement Coordinator at (512) 239-2574, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Grapevine, Docket No. 2011-0089-PST-E on July 22, 2011 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jason Chandler, Docket No. 2011-0093-MLM-E on July 22, 2011 assessing $1,954 in administrative penalties with $390 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cameron, Docket No. 2011-0096-PWS-E on July 22, 2011 assessing $385 in administrative penalties with $77 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S B Five Star Inc. dba M P Mart, Docket No. 2011-0099-PST-E on July 22, 2011 assessing $2,300 in administrative penalties with $460 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunoco Partners Marketing & Terminals L.P., Docket No. 2011-0106-IWD-E on July 22, 2011 assessing $13,200 in administrative penalties with $2,640 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J & S Trading, Inc. dba C Mart 6, Docket No. 2011-0114-PST-E on July 22, 2011 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alcorp, Inc. dba Webberville Grocery, Docket No. 2011-0118-PST-E on July 22, 2011 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Metro World Inc. dba Grab N Go, Docket No. 2011-0121-PST-E on July 22, 2011 assessing $1,925 in administrative penalties with $385 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KHAN, INC. dba Khan's Food Mart, Docket No. 2011-0141-PST-E on July 22, 2011 assessing $10,046 in administrative penalties with $2,009 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tao V. Nguyen dba Stop and Go Food Mart, Docket No. 2011-0145-PST-E on July 22, 2011 assessing $2,550 in administrative penalties with $510 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HAR26 INC dba Har26 Food Mart, Docket No. 2011-0151-PST-E on July 22, 2011 assessing $1,925 in administrative penalties with $385 deferred.

Information concerning any aspect of this order may be obtained by contacting Cara Windle, Enforcement Coordinator at (512) 239-2581, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GOLDEN SPREAD REDIMIX, INC., Docket No. 2011-0166-IWD-E on July 22, 2011 assessing $2,200 in administrative penalties with $440 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lisa Motor Lines, Inc., Docket No. 20110168-PST-E on July 22, 2011 assessing $2,894 in administrative penalties with $578 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding National Oilwell Varco, L.P., Docket No. 2011-0169-IWD-E on July 22, 2011 assessing $1,529 in administrative penalties with $305 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SIBER ENTERPRISE, INC. dba Star Food N Grocery, Docket No. 2011-0185-PST-E on July 22, 2011 assessing $2,905 in administrative penalties with $581 deferred.

Information concerning any aspect of this order may be obtained by contacting Tate Barrett, Enforcement Coordinator at (713) 422-8968, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Anton N. Zaghloul dba Nicki's Kwik Stop, Docket No. 2011-0210-PST-E on July 22, 2011 assessing $1,925 in administrative penalties with $385 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ruble Petroleum, Inc. dba Nat 24 #1, Docket No. 2011-0234-PST-E on July 22, 2011 assessing $4,610 in administrative penalties with $922 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Austin Trinity School and Flynn Construction Incorporated, Docket No. 2011-0247-MLM-E on July 22, 2011 assessing $6,545 in administrative penalties with $1,309 deferred.

Information concerning any aspect of this order may be obtained by contacting Martha Hott, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Scott W. Wiler, Docket No. 2011-0257-OSI-E on July 22, 2011 assessing $188 in administrative penalties with $37 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, P.G., Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RTI Hot Mix, Ltd., Docket No. 20110330WQE on July 22, 2011 assessing $1,869 in administrative penalties with $373 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Regatta Ridge, LLC, Docket No. 2011-0537-WQ-E on July 22, 2011 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Matus Construction Group LLC, Docket No. 2011-0539-WQE on July 22, 2011 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Jubilee Homes II, Ltd., Docket No. 2011-0590-WQ-E on July 22, 2011 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding HLM Development Company, L.L.C., Docket No. 2011-0538-WQ-E on July 22, 2011 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Yantis Partners, Ltd., Docket No. 2011-0502-WQ-E on July 22, 2011 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Oakland Construction Company Inc., Docket No. 2011-0592-WQ-E on July 22, 2011 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Mary K. Dickson, Docket No. 2011-0591-WQ-E on July 22, 2011 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201102951
Melissa Chao
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: August 3, 2011

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Invitation to Public Comment for the Draft July 2011 Water Quality Management Plan Update

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft July 2011 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) updates.

A copy of the draft July 2011 WQMP update may be found on the commission's Web site located at *http://www.tceq.texas.gov/waterquality/assessment/WQmanagement_updates.html.* A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on September 12, 2011. For further information, or questions, please contact Ms. Vignali at (512) 239-1303 or by email at *nvignali@tceq.texas.gov.*

TRD-201102922
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 2, 2011

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on August 2, 2011, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Old Tymer Enterprises, Inc.; SOAH Docket No. 582-10-5555; TCEQ Docket No. 2009-1991-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Old Tymer Enterprises, Inc. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201102952
Melissa Chao
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: August 3, 2011

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: Personal Financial Statement due May 2, 2011

Devora Mitchell, 2121 Oaklawn, Kermit, Texas 79745

Deadline: Monthly Report due June 6, 2011 for Committees

Peter Hwang, Houston 80-20 PAC, 8300 Bender Road, Humble, Texas 77396-2309

TRD-201102856

David A. Reisman
Executive Director
Texas Ethics Commission
Filed: July 28, 2011

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Texas Health and Human Services Commission

Notice of Award of a Major Consulting Contract

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the award of contract 529-06-0425-00046 RFQ 39 to **Health Management Associates,** an entity with a principal place of business at 120 Washington St., Lansing, MI. The contractor will provide consulting services regarding the Assessment of the Primary Care Case Management Waiver.

The total value of the contract with Health Management Associates is $41,000.00. The contract was executed on July 25, 2011 and will expire on September 17, 2011, unless extended or terminated sooner by the parties. Health Management Associates will produce numerous documents and reports during the term of the contract, with the final reporting due by September 17, 2011.

TRD-201102947
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: August 3, 2011

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Notice of Public Hearing on Proposed Elimination of Certain Medicaid Procedure Codes

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 16, 2011, at 1:30 p.m., to receive comment on proposed elimination of certain Medicaid procedure codes.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The elimination of certain Medicaid procedure codes is proposed to be effective October 1, 2011. As a result of a recent procedure code review, it was determined that 12 procedure codes should not be a benefit. These procedure codes are either payable through the use of another procedure code, not medically necessary, obsolete, or single use items that should be purchased instead of rented.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in home health services;

§355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services;

§355.8085, which addresses the reimbursement methodology for physicians and other medical professionals, including medical services, surgery, assistant surgery, and physician administered drugs/biologicals; medical services, surgery, assistant surgery, radiology, laboratory, and radiation therapy and;

§355.8441, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

Reimbursements paid to providers for the procedure codes included in these rate actions are to be reduced by a specified percentage based on topic. A one percent reimbursement reduction was implemented for services provided on and after September 1, 2010, in compliance with a plan approved in response to the January 15, 2010, letter from the Governor, Lieutenant Governor, and Speaker regarding the revision to the Spending Reduction Plan for the 2010-2011 Biennium submitted by HHSC. An additional one percent reimbursement reduction, for a total of a two percent reduction, was implemented February 1, 2011, in response to the December 6, 2010, letter from the Governor, Lieutenant Governor, and Speaker. Effective September 1, 2011 in response to direction from House Bill 1, additional reductions were implemented for specified providers. Detailed information related to specifics of the additional reductions can be found on the Medicaid fee schedules.

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after August 2, 2011. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201102924
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: August 2, 2011

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 18, 2011, at 1:00 p.m. to receive public comment on payment rate adjustments for the Community Based Alternatives (CBA) waiver program. This program is operated by the Texas Department of Aging and Disability Services (DADS). The hearing will be held in compliance with Human Resources Code §32.0282, which requires a public hearing on proposed payment rates. The public hearing will be held in the Lone Star Conference Room of

the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Esther Brown by calling (512) 491-1445, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to adjust rates for the CBA waiver program. The proposed payment rates will be effective September 1, 2011, and were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification." The CBA rates proposed at the public hearing conducted on June 29, 2011 are being withdrawn and replaced with the rates being proposed at this hearing.

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodology codified at Title 1 of the Texas Administrative Code (TAC), §355.503, Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs. These rates were subsequently adjusted in accordance with 1 TAC Chapter 355, Subchapter A, §355.101, Introduction, and §355.109, Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs, and Subchapter B, §355.201, Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission. These rate adjustments are being made as a result of the 2012-2013 General Appropriations Act (Article II, H.B. 1, 82nd Legislature, Regular Session, 2011).

Briefing Package. A briefing package describing the proposed payment rates will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Esther Brown by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Esther Brown, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Esther Brown at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Esther Brown, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-201102935
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: August 2, 2011

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Thursday, September 1, 2011, at 9:30 a.m. to receive public comment on the proposed rates for the new Supervised Independent Living (SIL) program. The SIL program is operated by the Texas Department of Family and Protective Services (DFPS). The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Esther Brown by calling (512) 491-1445, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Briefing Package. A briefing package describing the proposed payment rates will be available on August 12, 2011. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Esther Brown by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Esther Brown, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Esther Brown at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Esther Brown, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-201102942
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: August 3, 2011

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Notice of Public Hearing on Proposed Medicaid Payment Rates for Healthcare Common Procedure Coding System

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 16, 2011, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the third quarter 2010 and first and second quarter 2011 Healthcare Common Procedure Coding System (HCPCS).

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The proposed payment rates are proposed to be effective October 1, 2011, for the Medicaid Review for the third quarter 2010 and first and second quarter 2011 HCPCS.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners.

Reimbursements paid to providers for the procedure codes included in these rate actions are to be reduced by a specified percentage based on topic. A one percent reimbursement reduction was implemented for services provided on and after September 1, 2010, in compliance with a plan approved in response to the January 15, 2010, letter from the Governor, Lieutenant Governor, and Speaker regarding the revision to the Spending Reduction Plan for the 2010-2011 Biennium submitted by HHSC. An additional one percent reimbursement reduction, for a total of a two percent reduction, was implemented February 1, 2011, in

response to the December 6, 2010, letter from the Governor, Lieutenant Governor, and Speaker. Effective September 1, 2011 in response to direction from House Bill 1, additional reductions were implemented for specified providers. Detailed information related to specifics of the additional reductions can be found on the Medicaid fee schedules.

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after August 2, 2011. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201102925

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: August 2, 2011

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Notice of Public Hearing on Proposed Medicaid Payment Rates for Medicaid Calendar Fee Reviews

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 16, 2011, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the quarterly Medicaid Calendar Fee Review.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The proposed payment rates are proposed to be effective October 1, 2011, for this Medicaid Calendar Fee Review for the following services:

(1) Diabetic Equipment and Supplies

(2) H Codes (Substance Use Disorder Services, Screening Brief Intervention and Treatment and Tuberculosis Clinic Services)

(3) K Codes (Manual and electric wheelchairs, batteries, and accessories)

(4) Nuclear Medicine

(5) Physician-Administered Drugs

(6) Physical, Occupational, and Speech Therapy

(7) Radiation Oncology

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in home health services;

§355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services;

§355.8085, which addresses the reimbursement methodology for physicians and other medical professionals, including medical services, surgery, assistant surgery, and physician administered drugs/biologicals; medical services, surgery, assistant surgery, radiology, laboratory, and radiation therapy and;

§355.8441, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

Reimbursements paid to providers for the procedure codes included in these rate actions are to be reduced by a specified percentage based on topic. A one percent reimbursement reduction was implemented for services provided on and after September 1, 2010, in compliance with a plan approved in response to the January 15, 2010, letter from the Governor, Lieutenant Governor, and Speaker regarding the revision to the Spending Reduction Plan for the 2010-2011 Biennium submitted by HHSC. An additional one percent reimbursement reduction, for a total of a two percent reduction, was implemented February 1, 2011, in response to the December 6, 2010, letter from the Governor, Lieutenant Governor, and Speaker. Effective September 1, 2011 in response to direction from House Bill 1, additional reductions were implemented for specified providers. Detailed information related to specifics of the additional reductions can be found on the Medicaid fee schedules.

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after August 2, 2011. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201102926

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: August 2, 2011

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Notice of Public Hearing on Proposed Medicaid Payment Rates for the Vagal Nerve Stimulator and Lead

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 16, 2011, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Vagal Nerve Stimulator special review.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The proposed payment rates for the Vagal Nerve Stimulator and Lead are proposed to be effective October 1, 2011.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in home health services;

§355.8441, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

Reimbursements paid to providers for the procedure codes included in these rate actions are to be reduced by a specified percentage based on topic. A one percent reimbursement reduction was implemented for services provided on and after September 1, 2010, in compliance with a plan approved in response to the January 15, 2010, letter from the Governor, Lieutenant Governor, and Speaker regarding the revision to the Spending Reduction Plan for the 2010-2011 Biennium submitted by HHSC. An additional one percent reimbursement reduction, for a total of a two percent reduction, was implemented February 1, 2011, in response to the December 6, 2010, letter from the Governor, Lieutenant Governor, and Speaker. Effective September 1, 2011 in response to direction from House Bill 1, additional reductions were implemented for specified providers. Detailed information related to specifics of the additional reductions can be found on the Medicaid fee schedules.

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after August 2, 2011. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201102923
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: August 2, 2011

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Public Notice

The Texas Health and Human Services Commission intends to submit to the Centers for Medicare and Medicaid Services (CMS) a request for an amendment to the Texas Home Living waiver program, under the authority of §1915(c) of the Social Security Act. The Texas Home Living waiver program is currently approved for the five-year period beginning March 1, 2007, and ending February 29, 2012. The proposed effective date for the amendment is September 1, 2011.

The Texas Home Living waiver program provides community-based services and supports to individuals with intellectual disabilities in order to assist them in continuing to live in the community instead of in an institution. The Texas Home Living waiver program serves individuals with an intellectual disability diagnosis or an IQ of 75 or below and a related condition. Services include assistance with activities of daily living, day habilitation, respite, supported employment, prescription medications, adaptive aids, behavioral support, community support, dental, employment assistance, minor home modifications, nursing, audiology, dietary assistance, physical therapy, occupational therapy, and speech and language pathology.

The purpose of this amendment is to increase the capacity of the waiver to allow for more individuals to enroll in the Texas Home Living waiver program. Demonstration of cost neutrality for the waiver will be updated as well.

The Health and Human Services Commission is requesting that the waiver amendment be approved for the period beginning September 1, 2011, through February 29, 2012. This amendment maintains cost neutrality for waiver years 2011 through 2012.

To obtain copies of the proposed waiver amendment, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-370, Austin, Texas 78708-5200, phone (512) 491-1152, fax (512) 491-1957, or by email at christine.longoria@hhsc.state.tx.us.

TRD-201102927
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: August 2, 2011

♦ ♦ ♦

Department of State Health Services

Notice of Public Hearings Schedule for Development and Review of Block Grant Funds

Under the authority of the Preventive Health Amendments of 1992 (see 42 United States Code, §§300w et seq.) the Department of State Health Services (department) is making application to the U.S. Public Health

Service for funds to continue the Preventive Health and Health Services Block Grant (PHHSBG) during federal fiscal year (FFY) 2012. Provisions in the Act require the chief executive officer of each state to annually furnish a description (a work plan) of the intended use of block grant funds in advance of each FFY. Each state is required to hold hearings and to make proposals of these descriptions public within each state in such a manner as to facilitate comments.

In FFY 2012, two activities are proposed to be funded under the block grant. These include sexual assault prevention and crisis services and local health departments.

The PHHS Block Grant award for FFY 2011 was $3,223,914. Of this amount, $510,620 was required to be used for sexual assault prevention and crisis services. The department has prepared the following schedule for the development and review of the 2012 Work Plan for the PHHSBG.

In August 2011, the department will hold public hearings in four Health Service Regions (HSRs):

August 23, 2011 (10:00 a.m. - 12:00 p.m.)

Department of State Health Services, Health Service Region 6/5S, 5425 Polk Street, Suite J, Houston, Texas 77023

August 23, 2011 (10:00 a.m. - 12:00 p.m.)

Department of State Health Services, Health Service Region 7, 1100 West 49th Street, Tower Building, Conference Room T-607, Austin, Texas 78756

August 24, 2011 (10:00 a.m. - 12:00 p.m.)

Department of State Health Services, Health Service Region 1, 6302 Iola Avenue, Room 201, Lubbock, Texas 79424

August 24, 2011 (2:00 p.m. - 4:00 p.m.)

Department of State Health Services, Health Service Region 8, 7430 Louis Pasteur, Room 228, San Antonio, Texas 78229

Following these hearings, the department will summarize and consider the impact of the public comments received. The department will then notify the public of the availability of a published summary of these hearings. In October 2011, the department will prepare the FFY 2012 Work Plan for the PHHSBG and forward it to the federal government.

Please note that the department will continuously conduct activities to inform recipients of the availability of services/benefits, the rules and eligibility requirements, and complaint procedures.

Written comments regarding the PHHSBG may be submitted through August 26, 2011, to Amy Pearson, Block Grant Coordinator, Division for Regional and Local Health Services, Mail Code 1908, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, or email at amy.pearson@dshs.state.tx.us. For further information, please contact Ms. Pearson at (512) 776-2028 or (512) 776-7770.

TRD-201102943
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: August 3, 2011

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Texas Department of Housing and Community Affairs

2011 HOME Single Family Programs Reservation System Notice of Funding Availability

(1) Summary.

The Texas Department of Housing and Community Affairs (the "Department") announces the availability of approximately $11,000,000 in funding from the HOME Investment Partnerships Program (HOME) for single family housing programs under a Reservation System. The availability and use of these funds is subject to the State HOME Rules at 10 TAC Chapter 53 ("HOME Rules") in effect at the time the Reservation System Participation application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306 of the Texas Government Code. Other federal regulations apply, including but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, 24 CFR §84.42 and §85.36 for conflict of interest, 24 CFR §135.38 for §3 requirements and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

(2) Allocation of HOME Funds.

(a) The funds are made available through the Department's allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD). This Notice of Funding Availability (NOFA) is not subject to the Regional Allocation Formula because funds were regionally allocated during the release of the 2010 HOME Single Family Programs NOFA.

(b) Funds made available under this NOFA, excluding those funds that are set-aside for Persons with Disabilities, may be reserved for individual households for the following Program Activities:

(i) Homeowner Rehabilitation Assistance (HRA);

(ii) Homebuyer Assistance (HBA);

(iii) Tenant-Based Rental Assistance (TBRA);

(iv) Contract for Deed Conversion (CFDC); and/or

(v) Disaster Relief.

(c) Persons with Disabilities Set-Aside. Approximately $3,300,000 in funding is set-aside to assist Persons with Disabilities with TBRA, HRA or HBA. Approximately $2,000,000 is reserved for use in any area of the state including within Participating Jurisdictions; approximately $1,300,000 is reserved for use only in Non-Participating Jurisdictions (Non-PJ) areas.

(d) Updated balances for reservations system may be accessed online at http://www.tdhca.state.tx.us/home-division/home-reservation-summary.htm. Reservations of Funds may be submitted at any time during the term of a Reservation System Participation agreement, or until such time as funds made available under this NOFA are exhausted, whichever comes first.

(3) Eligible and Prohibited Activities.

(a) Prohibited activities include those at 24 CFR §92.214 and 10 TAC Chapter 53.

(b) Funds will not be eligible for use in a Participating Jurisdiction (PJ) except for Applications receiving funds under the Persons with Disabilities Set-Aside and designated for use in a PJ.

(c) Eligible Applicants are Units of General Local Government, Nonprofit Organizations, and Public Housing Authorities.

(4) Application Threshold Requirements.

Threshold criteria in 10 TAC Chapter 53 are mandatory requirements at the time of application submission, unless specifically indicated otherwise, and will be included in the written agreement.

(5) Application Submission.

(a) All applications for a Reservation System Participation Agreement submitted under this NOFA must be received on or before **5:00 p.m. Thursday, June 30, 2012,** regardless of method of delivery. The Department will accept applications from **8:00 a.m. to 5:00 p.m.** each business day, excluding federal and state holidays, from the date this NOFA is published in the *Texas Register* until the deadline date. For questions regarding this NOFA, please contact the HOME Division at (512) 463-8921 or via email at HOME@tdhca.state.tx.us.

(b) All applications must be submitted and documentation provided as described in 10 TAC Chapter 53 and the Application Submission Procedures Manual (ASPM).

(c) All Application materials, including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

(d) Applicants are required to remit a nonrefundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $30 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. The Application fee is not an allowable or reimbursable cost under the HOME Program. An Applicant that is a Nonprofit Organization may request a fee waiver in accordance with §2306.147(b) of the Texas Government Code.

(e) This NOFA does not include text of the various applicable regulatory provisions pertinent to the HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations, and contact the HOME Division for guidance and assistance.

(f) Applications must be sent via overnight delivery to:

Texas Department of Housing and Community Affairs

HOME Division

221 East 11th Street

Austin, Texas 78701-2410

Or, via the U.S. Postal Service to:

Texas Department of Housing and Community Affairs

HOME Division

P.O. Box 13941

Austin, Texas 78711-3941

TRD-201102941
Timothy K. Irvine
Acting Director
Texas Department of Housing and Community Affairs
Filed: August 3, 2011

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2012 Housing Trust Fund Program Amy Young Barrier Removal Program Notice of Funding Availability

I. Source of Housing Trust Funds.

The Housing Trust Fund was established by the 72nd Legislature, Senate Bill 546, §2306.201 of the Texas Government Code, to create affordable housing for low and very low income individuals and families. Funding sources consist of appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts, grants, or donations.

II. Notice of Funding Availability (NOFA).

The Texas Department of Housing and Community Affairs (the "Department") announces the availability of $4,000,000 in funding from the Housing Trust Fund (HTF) for the Amy Young Barrier Removal Program ("Program") through the Department's Reservation System. Approximately $1,738,500 is available from the 2012 - 2013 HTF appropriation and $2,261,500 in loan repayments, interest earnings, and deobligations is available from prior years. The Program provides one-time grants of up to $20,000 to Persons with Disabilities qualified as Low Income, for home modifications necessary for accessibility and the elimination of hazardous conditions. Program beneficiaries may be tenants or homeowners and their household members with disabilities.

The Program serves eligible Households with incomes of 80 percent or less of the Area Median Family Income (AMFI), or 80 percent of the State Median Family Income, adjusted for Household size, whichever is greater, utilizing a Department approved methodology.

III. Applicant Eligibility.

Applicants must meet the qualifications of the NOFA and must be a Unit of Local Government, Nonprofit Organization, Public Housing Authority, or Public Agency.

IV. Funding Reservation Process.

To access funds, eligible Applicants must apply for approval to participate in the Funding Reservation Process in which approved Administrators may reserve funds on a first-come, first-served basis. Reservation System Access Agreements will be required for participation as described in the Notice of Funding Availability.

V. Application Deadline and Availability.

The HTF Amy Young Barrier Removal Program NOFA is posted on the Department's website: http://www.tdhca.state.tx.us/htf/index.htm and organizations on the Department's list serve will receive an email notification that the NOFA is available on the Department's website.

VI. Deadline for Receipt.

The Department will begin accepting Applications to access the Reservation System starting on **August 12, 2011 and will grant access on an ongoing basis until all Program funds are reserved, or until August 31, 2012,** whichever occurs first.

Mailing Address:

Mr. Mark Leonard

Housing Trust Fund Program Coordinator

Housing Trust Fund Division

Texas Department of Housing and Community Affairs

P.O. Box 13941

Austin, Texas 78711-3941

(All U.S. Postal Service including Express)

Courier Delivery:

221 East 11th Street, 1st Floor

Austin, Texas 78701

(FedEx, UPS, Overnight, etc.)

Hand Delivery:

If you are hand delivering the application, contact Mark Leonard at (512) 936-7799 (htf@tdhca.state.tx.us) or Dee Copeland Patience at (512) 475-2567 when you arrive at the lobby of our building for application acceptance.

Questions.

Questions pertaining to the content of the HTF Amy Young Barrier Removal Program NOFA may only be directed to Mark Leonard at (512) 936-7799 (htf@tdhca.state.tx.us) or Dee Copeland Patience at (512) 475-2567.

TRD-201102940
Timothy K. Irvine
Acting Director
Texas Department of Housing and Community Affairs
Filed: August 3, 2011

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Notice of Public Hearing for the Movement of American Recovery and Reinvestment Act (ARRA) Weatherization Assistance Program (WAP) Funds

In commitment to the full expenditure of ARRA WAP funds, the Texas Department of Housing and Community Affairs (TDHCA) adopted 10 TAC Chapter 5, Subchapter I, §§5.900 - 5.905, Deobligation and Reobligation of Funds for Department of Energy Weatherization Assistance Program under the American Recovery and Reinvestment Act.

Pursuant to this rule, TDHCA proposes to:

* Obligate ARRA WAP funding to Brazos Valley Community Action Agency in the amount of $750,000.

* Obligate ARRA WAP funding to the City of El Paso in the amount of $450,000.

* Obligate ARRA WAP funding to the City of Fort Worth, Department of Housing and Economic Development in the amount of $750,000.

* Obligate ARRA WAP funding to the City of San Antonio in the amount of $2,100,000.

* Obligate ARRA WAP funding to Combined Community Action, Inc. in the amount of $500,000.

* Obligate ARRA WAP funding to Concho Valley Community Action Agency in the amount of $250,000.

* Obligate ARRA WAP funding to Economic Opportunities Advancement Corporation of Planning Region XI in the amount of $500,000.

* Obligate ARRA WAP funding to Greater East Texas Community Action Program in the amount of $2,750,000.

* Obligate ARRA WAP funding to Nueces County Community Action Agency in the amount of $750,000.

* Obligate ARRA WAP funding to Programs for Human Services, Inc. in the amount of $3,500,000.

* Obligate ARRA WAP funding to Travis County Health and Human Services and Veteran Services in the amount of $2,000,000.

* Accept the voluntary relinquishment of Hill Country Community Action Agency ARRA WAP funding in the amount of $1,000,000.

* Accept the voluntary relinquishment of Panhandle Community Services ARRA WAP funding in the amount of $750,000.

* Accept the voluntary relinquishment of Rolling Plains Management Corporation ARRA WAP funding in the amount of $750,000.

The public hearing has been scheduled as follows:

Monday, August 22, 2011, 2:00 p.m.

Texas Department of Housing and Community Affairs

221 East 11th Street, Room 116

Austin, Texas 78701

A representative from TDHCA will receive comments from interested citizens and affected groups regarding the proposed movement of funds.

Anyone may submit comments on the movement of funds in written form or oral testimony at the public hearing. TDHCA must receive written comments no later than **5:00 p.m., Monday, September 1, 2011.** Public comments via email to cate.taylor@tdhca.state.tx.us, in writing to: TDHCA, Energy Assistance Section, P.O. Box 13941, Austin, Texas 78711-3941, Attn: Ms. Cate Taylor, or by fax to (512) 475-3935.

Individuals who require auxiliary aids or services for this meeting should contact Ms. Gina Esteves at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Jorge Reyes, (512) 475-4577, at least three days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201102956
Timothy K. Irvine
Acting Director
Texas Department of Housing and Community Affairs
Filed: August 3, 2011

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Notice of Public Hearing on Section 8 2012 Annual Plan

Section 511 of Title V of the Quality Housing and Work Responsibility Act of 1998 (P. L. 205-276) requires the Texas Department of Housing and Community Affairs (the "Department") to prepare a 2012 Annual Plan covering operations of the Section 8 Program. Title 24, §903.17 of the Code of Federal Regulations requires that the Department conduct a public hearing regarding that plan. The Department will hold a public hearing to receive written comments for the development of the Department's 2012 Annual Plan. The hearing will take place at the following time and location:

September 28, 2011

Texas Department of Housing and Community Affairs

221 East 11th Street, Room 116

Austin, Texas 78701

8:30 a.m. - 11:30 a.m.

The proposed 2012 Annual Plan and all supporting documentation are available to the public for viewing at the Department's main office, 221 East 11th Street, Attn: Section 8 Program, Austin, Texas 78701 on weekdays during the hours of 8:00 a.m. until 4:30 p.m. The proposed plan will also be available for viewing on the Department's website at www.tdhca.state.tx.us/sec8.htm.

Questions or requests for additional information may be directed to Ms. Willie Faye Hurd, Section 8 Program Manager, Community Af-

fairs Division at whurd@tdhca.state.tx.us or by mail at P.O. Box 13941, Austin, Texas 78711-3941, (512) 475-3892. **Comments must be received by 5:00 p.m. Wednesday, October 5, 2011.**

Any interested persons unable to attend the hearing may submit their comments in writing to Willie Faye Hurd prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Ms. Hurd at least three (3) days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids or services for this hearing should contact Gina Esteves at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two (2) days before the scheduled hearing so that appropriate arrangements can be made.

TRD-201102931
Timothy K. Irvine
Acting Director
Texas Department of Housing and Community Affairs
Filed: August 2, 2011

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Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of SAVVYSHERPA ADMINISTRATIVE SERVICES, LLC., a foreign third party administrator. The home office is MINNEAPOLIS, MINNESOTA.

Application of HUMANA PHARMACY SOLUTIONS, INC., a foreign third party administrator. The home office is LOUISVILLE, KENTUCKY.

Application of IBM DAKSH BUSINESS PROCESS SERVICES LIMITED, a foreign third party administrator. The home office is GURGAON, HARYANA, INDIA.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-201102954
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: August 3, 2011

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Texas Department of Insurance, Division of Workers' Compensation

Notice of Informal Work Group Meetings

The Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) will hold a series of informal work group meetings, which will be open to the public, that will address House Bill (HB) 2089, enacted by the 82nd Legislature, Regular Session, effective September 1, 2011. HB 2089 enacted by Texas Labor Code §408.0815 which requires the adoption of rules that establish a procedure by which an insurance carrier may recoup overpayment of income benefits and shall pay an underpayment of income benefits. These rules must be adopted not later than January 1, 2012. The purpose of these meetings will be to formulate rule language for the rules required by HB 2089.

These meetings will be held on Thursday, September 1, 2011 at 1:30 p.m., Tuesday, September 6, 2011 at 1:30 p.m. and Monday, September 12, 2011 at 1:30 p.m.; all times are Central Standard Time (CST).

The meetings will be held in the Tippy Foster Room at the TDI-DWC Central Office at 7551 Metro Center Drive, Suite 100 in Austin, Texas. The TDI-DWC will audio stream the informal work group meetings for persons who are unable to attend in person.

To listen to the audio stream, access the calendar at www.tdi.state.tx.us/wc/events/index.html and click "Link to Live Webcast". Media Player 7 (or newer version) or RealPlayer 10 (or newer version) are required to hear the audio stream. Audio streaming will begin approximately five minutes before the scheduled time of the public meeting.

The TDI-DWC offers reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require special accommodations, contact Idalia Salazar at (512) 804-4403 or by e-mail at Idalia.Salazar@tdi.state.tx.us a minimum of two business days prior to the informal work group meeting dates.

If you have any questions regarding this memo, contact Brent Hatch at (512) 804-4102 or Brent.Hatch@tdi.state.tx.us.

TRD-201102949
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: August 3, 2011

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Texas Department of Licensing and Regulation

Vacancies on Licensed Breeders Advisory Committee

The Texas Department of Licensing and Regulation (Department) announces nine vacancies on the Licensed Breeders Advisory Committee (Committee) established by Texas Occupations Code, Chapter 802. The purpose of the Licensed Breeders Advisory Committee is to advise the Texas Commission of Licensing and Regulation (Commission) and the Department on matters related to the administration and enforcement of Chapter 802, including licensing fees and standards adopted under Subchapter E.

The Committee is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The board consists of the following members: two members who are licensed breeders; two members who are veterinarians; two members who represent animal welfare organizations each of which has an office based in this state; two members who represent the public; and one member who is an animal control officer as defined in §829.001, Health and Safety Code. Members of the advisory committee serve staggered four-year terms. The terms of four or five members expire on February 1 of each odd-numbered year. This announcement is for the positions of two licensed breeders; two veterinarians; two representatives of animal welfare organizations based in Texas; two public members; and an animal control officer. All applications must be received no later than 5:00 p.m. Central Standard Time on September 15, 2011 to be considered for these vacancies.

Interested persons should download an application from the Department website at: www.license.state.tx.us. Applicants can also request an application from the Texas Department of Licensing and Regulation by telephone (800) 803-9202, fax (512) 475-2874 or email advi-

sory.boards@license.state.tx.us. Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-201102866
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: July 29, 2011

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Texas Lottery Commission

Instant Game Number 1359 "$250,000 Bingo"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1359 is "$250,000 BINGO". The play style for the game SLOTS is "key symbol match". The play style for the game INSTANT BONUS is "auto win". The play style for the game BINGO is "bingo".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1359 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 1359.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are $10.00, $20.00, $50.00, $100, $500, CHERRIES SYMBOL, LEMON SYMBOL, STACK OF BILLS SYMBOL, CROWN SYMBOL, SHAMROCK SYMBOL, POT OF GOLD SYMBOL, GOLD BAR SYMBOL, BELL SYMBOL, TEN SYMBOL, TWENTY SYMBOL, FIFTY SYMBOL, SVY FIV SYMBOL, ONE HUN SYMBOL, TWO FTY SYMBOL, FIV HUN SYMBOL, TRY AGAIN SYMBOL, MAYBE NEXT TIME SYMBOL, B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75 and FREE.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1359 - 1.2D

PLAY SYMBOL	CAPTION
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$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUN
$500	FIV HUN
CHERRIES SYMBOL	CHERRY
LEMON SYMBOL	LEMON
STACK OF BILLS SYMBOL	BILLS
CROWN SYMBOL	CROWN
SHAMROCK SYMBOL	SHMRCK
POT OF GOLD SYMBOL	GOLD
GOLD BAR SYMBOL	BAR
BELL SYMBOL	BELL
TEN SYMBOL	DOLLARS
TWENTY SYMBOL	DOLLARS
FIFTY SYMBOL	DOLLARS
SVY FIV SYMBOL	DOLLARS
ONE HUN SYMBOL	DOLLARS
TWO FTY SYMBOL	DOLLARS
FIV HUN SYMBOL	DOLLARS
TRY SYMBOL	AGAIN
MAYBE SYMBOL	NEXT TIME

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $10.00, or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $50.00, $75.00, $100, $125, $175, $250 or $500.

H. High-Tier Prize - A prize of $750, $1,000, $2,500, $10,000 or $250,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1359), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1359-0000001-001.

K. Pack - A pack of "$250,000 BINGO" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed. All packs will be tightly shrinkwrapped. There will be no breaks between the tickets in a pack.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$250,000 BINGO" Instant Game No. 1359 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$250,000 BINGO" Instant Game is determined once the latex on the ticket is scratched off to expose 193 (one hundred ninety-three) play symbols. For the game SLOTS, if a player reveals 3 matching play symbols in any one PULL, the player wins PRIZE for that pull. For the game INSTANT BONUS, if a player reveals a prize amount play symbol, the player wins that amount instantly. For

the game BINGO, the player must scratch off the CALLER'S CARD area to reveal 30 (thirty) BINGO Numbers. The player must scratch all the BINGO Numbers on CARDS 1 through 6 that match the BINGO Numbers on the CALLER'S CARD. Each "CARD" has a corresponding prize legend. Players win by matching those same numbers on the six Player's Cards. If the player finds a complete horizontal, vertical or diagonal line, the four corners of the grid, or an X pattern, the player wins a prize according to the legend of the respective playing grid. Examples of play: If a player matches all bingo numbers plus the "FREE" space in a complete horizontal, vertical or diagonal line pattern in any one card, the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers in all four (4) corners pattern in any one card, the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers plus "FREE" space to make a complete "X" pattern in any one card, the player wins prize according to the legend of the respective playing card. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 193 (one hundred ninety-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 193 (one hundred ninety-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 193 (one hundred ninety-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 193 (one hundred ninety three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a pack will not have identical patterns.

B. A ticket will win as indicated by the prize structure.

C. A ticket can win up to three times.

D. BINGO: There will never be more than one win on a single BINGO CARD.

E. BINGO: The highest prize won per card will be paid.

F. BINGO: No duplicate numbers will appear on the CALLER'S CARD.

G. BINGO: No duplicate numbers will appear on each individual BINGO CARD.

H. BINGO: The number range used for each letter (B, I, N, G, O) will be as follows: B (01-15), I (16-30), N (31-45), G (46-60), O (61-75).

I. BINGO: Each BINGO CARD on the same ticket must be unique.

J. BINGO: The 30 CALLER'S CARD numbers will match 53 to 83 numbers per ticket.

K. BINGO: The majority of the tickets will have unique configurations.

L. BINGO: There will be at least one (1) 'near win' on each of the six (6) BINGO CARDS on each non-winning ticket.

M. BINGO: A 'near win' is one number short of a complete horizontal, vertical, diagonal line or 4 corners, except for the 'X' where there are two numbers less, one in each diagonal line (one of which must be a corner).

N. SLOTS: The Play area consists of nine (9) play symbols and three (3) PRIZE symbols.

O. SLOTS: There will never be three (3) identical symbols in a vertical or diagonal line.

P. SLOTS: No prize amount will appear more than once in this play area except as required on multiple win tickets.

Q. SLOTS: Non-winning tickets will never contain more than two (2) of the same play symbols over the entire play area.

R. SLOTS: Consecutive non-winning tickets within a pack will not have identical PULLS. For instance if the first ticket contains CHERRIES, CROWN, POT OF GOLD in any PULL then the next ticket may not contain CHERRIES, CROWN and POT OF GOLD in any row in any order.

S. SLOTS: Non-winning tickets will not have identical games. For example if PULL 1 is CHERRIES, CROWN, and POT OF GOLD then PULL 2 and PULL 3 will not contain CHERRIES, CROWN, and POT OF GOLD in any order.

T. SLOTS: Winning tickets will contain three (3) matching Play Symbols in a horizontal row.

U. SLOTS: On winning tickets, non-winning games will have different prize amounts from the winning prize amounts in this play area.

V. INSTANT BONUS: The Play area consists of one (1) Play Symbol.

W. INSTANT BONUS: Winning tickets will display a prize amount: TEN DOLLARS, TWENTY DOLLARS, FIFTY DOLLARS, SVY FIV DOLLARS, ONE HUN DOLLARS, TWO FTY DOLLARS OR FIV HUN DOLLARS.

2.3 Procedure for Claiming Prizes.

A. To claim a "$250,000 BINGO" Instant Game prize of $10.00, $20.00, $30.00, $50.00, $75.00, $100, $125, $175, $250, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, required to pay a $30.00, $50.00, $75.00, $100, $125, $175, $250 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$250,000 BINGO" Instant Game prize of $750, $1,000, $2,500, $10,000 or $250,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$250,000 BINGO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$250,000 BINGO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "$250,000 BINGO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game No. 1359. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1359 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	897,600	4.55
$20	244,800	16.67
$30	17,000	240.00
$50	88,400	46.15
$75	10,200	400.00
$100	17,068	239.04
$125	6,834	597.01
$175	6,834	597.01
$250	5,610	727.27
$500	4,080	1,000.00
$750	255	16,000.00
$1,000	24	170,000.00
$2,500	7	582,857.14
$10,000	6	680,000.00
$250,000	6	680,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.14. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1334 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant ticket game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1359, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201102945

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 3, 2011

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on July 27, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable to Amend its State-Issued Certificate of Franchise Authority; to add City of Brownsville, Texas, Project Number 39629.

The requested amendment is to expand the service area footprint to include the municipality of Brownsville, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 39629.

TRD-201102869
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 29, 2011

♦ ♦ ♦

Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 26, 2011, for retail electric provider (REP) certification, pursuant to §39.352 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of GDF Suez Retail Energy Solutions, LLC for Retail Electric Provider Certification, Docket Number 39624.

Applicant's requested service area is for the geographic area of the entire State of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Docket Number 39624.

TRD-201102868
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 29, 2011

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Texas Department of Transportation

Notice of Public Hearing - Non-Radioactive Hazardous Materials Routes

In accordance with 43 TAC §25.103(g), the Texas Department of Transportation will hold a public hearing to receive comments on a proposal received from the City of Laredo Planning Department to create designated Non-Radioactive Hazardous Materials (NRHM) routes in Laredo, Texas.

Recommended Route Description: The recommended route contains both travel directions of the following roadways: State Loop 20 (Bob Bullock Loop) at the World Trade Bridge to Cuatro Vientos Road at Hwy 359. The route then follows Cuatro Vientos Road from State Hwy 359 to Mangana-Hein Road, and Mangana-Hein Road at Cuatro Vientos Road to US Hwy 83.

The hearing will be held at **9:30 a.m. on September 21, 2011** at the following location:

Texas Department of Transportation

200 East Riverside Drive

Building 200

Room 1A-1

Austin, Texas 78704

All interested citizens are invited to attend the hearing and to provide input. Those desiring to make official comments may register starting at 9:00 a.m. Oral and written comments may be presented at the public hearing or written comments may be submitted by regular postal mail during the 30-day public comment period. Written comments may be submitted to Ms. Carol T. Rawson, P.E., Director, Traffic Operations Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments is 5:00 p.m. September 28, 2011.

Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Government and Public Affairs Division, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-9957. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

TRD-201102934
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: August 2, 2011

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Public Notice - Aviation

Pursuant to Transportation Code §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

http://www.txdot.gov/public_involvement/hearings_meetings.

Or visit www.txdot.gov, click on Public Involvement and click on Hearings and Meetings.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-201102840
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 27, 2011

♦ ♦ ♦

Stephen F. Austin State University

Notice of Consultant Contract Renewal

Stephen F. Austin State University, Nacogdoches, Texas intends to renew a contract for environmental services with Hydrex, 1128 N.W. Stallings, Nacogdoches, Texas 75964-3428.

The firm will perform environmental assessments for projects as requested.

The original contract was in the sum of $45,000.00 and was published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7788). The contract was renewed through August 31, 2011 with a total amount not to exceed $150,000 and was published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 773). The contract will

be renewed beginning August 31, 2011 and continuing through August 31, 2016 with a total amount not to exceed $200,000.

Documents, films, recording, or reports of intangible results may be presented by the outside consultant. Services will be on an as needed basis.

All inquiries should be directed to Diana Boubel, Director of Procurement, Stephen F. Austin State University, P.O. Box 13030 SFA Station, Nacogdoches, Texas 75962; email: dboubel@sfasu.edu; fax (936) 468-4282; phone (936) 468-4037.

TRD-201102948
Damon C. Derrick
General Counsel
Stephen F. Austin State University
Filed: August 3, 2011

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*